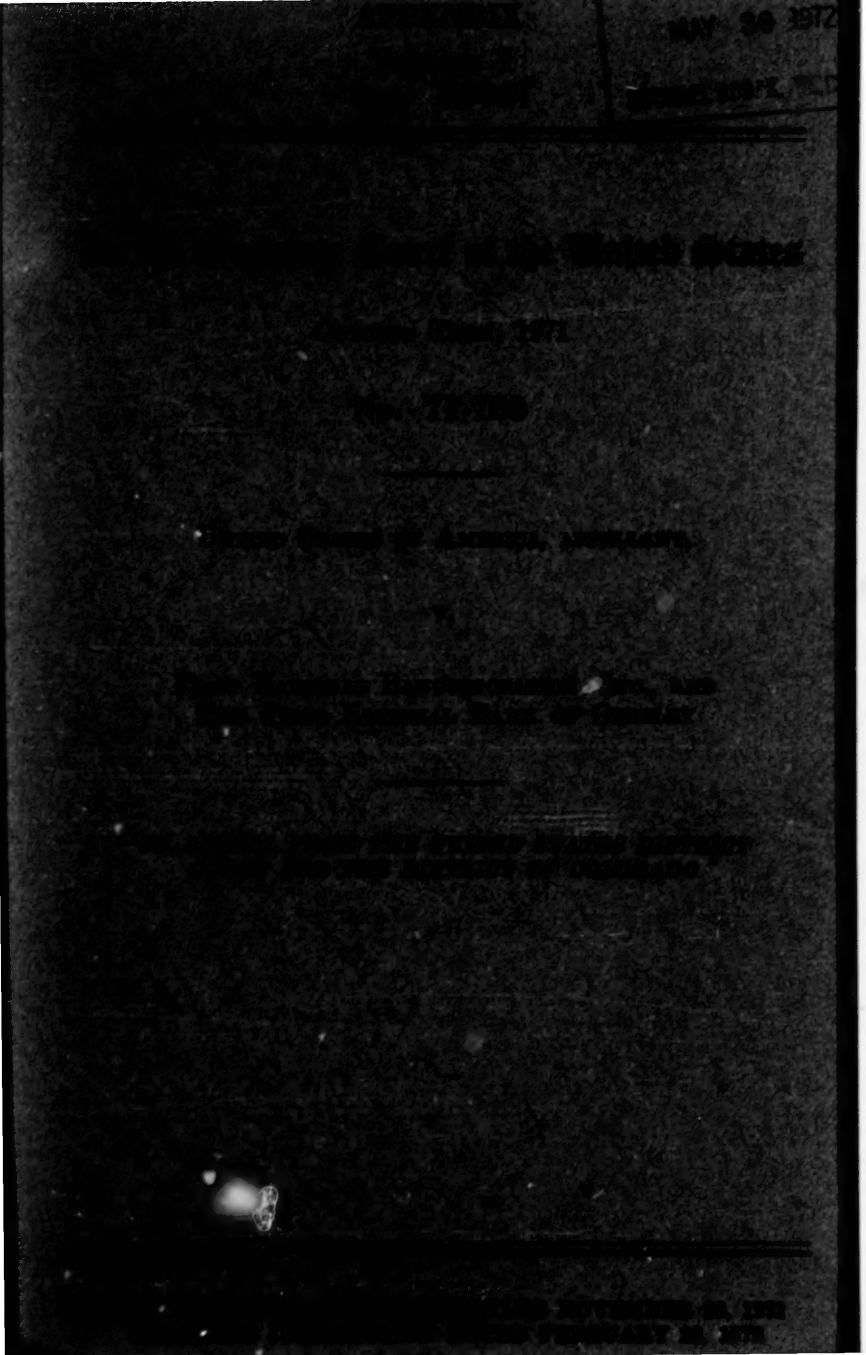

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-703

UNITED STATES OF AMERICA, APPELLANT,

v.

FIRST NATIONAL BANCORPORATION, INC., AND THE FIRST NATIONAL BANK OF GREELEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

INDEX *

	Page
Relevant Docket Entries	1
Complaint by the United States filed July 8, 1970	4
Answer of First National Bancorporation, Inc. and The First National Bank of Greeley, filed July 24, 1970	10
Complaint by the United States as amended *nunc pro tunc* January 15, 1971	20
Trial of the action held before the Hon. William E. Doyle, U.S. District District Judge for the District of Colorado, commencing on May 3, 1971, at Denver, Colorado:	
Appearances	27
Testimony of Howard E. Smith—direct [Tr. 120]	28
—cross [127]	32
—redirect [131]	34
Testimony of George P. Evans—direct [138]	35
—cross [157]	42
—redirect [160]	43

---

* The memorandum opinion and order of the district court are printed in Appendix A of the Jurisdictional Statement of the United States, at pages 26-61.

		Page
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 4, 1971:		
Appearances		44
Testimony of Richard G. Walsh—direct	[166]	45
—voir dire	[169]	46
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 5, 1971:		
Appearances		98
Testimony of Richard G. Walsh (continued)		
—cross	[350]	98
—redirect	[435]	133
—recross	[457]	143
Testimony of James M. Small—direct	[470]	150
—cross	[481]	154
—redirect	[487]	158
—recross	[491]	160
Testimony of Thomas Moon—direct	[492]	160
—cross	[495]	162
Testimony of H. J. Bleakley—direct	[499]	164
—cross	[506]	168
Testimony of Harry Bloom—direct	[518]	172
—cross	[521]	174
Testimony of Stanley Allen—direct	[524]	175
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 6, 1971:		
Appearances		186
Testimony of Stanley Allen (continued)		
—cross	[548]	186
—redirect	[549]	187
Testimony of Donald W. Winter—direct	[550]	187
—cross	[558]	192
—redirect	[567]	197
—recross	[568]	198
Testimony of Walter R. McKinstry—direct	[570]	199
—cross	[575]	202
—redirect	[578]	204
Testimony of Charles H. Smukler—direct	[579]	204
—cross	[590]	210
—redirect	[601]	216
—recross	[602]	217

BOOK TOO LARGE FOR FIL

		Page
Testimony of George R. Hall—direct	[604]	218
—voir dire	[641]	235
—cross	[689G]	262
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 10, 1971:		
Appearances		276
Testimony of Theodore D. Brown—direct	[726]	276
—cross	[745]	286
—redirect	[759]	293
—recross	[763]	295
—redirect	[767]	297
Testimony of A. H. Trautwein—direct	[767]	297
—cross	[769]	299
—redirect	[771]	299
—recross	[772]	300
Testimony of Norman M. Dean—direct	[773]	301
—cross	[774]	301
—redirect	[777]	303
Testimony of Dale R. Hinman—direct	[779]	303
—cross	[780]	304
—redirect	[782]	304
Testimony of Robert M. Gilbert—direct	[783]	305
—cross	[784]	305
Testimony of Larry DeBell—direct	[785]	306
—cross	[795]	312
Testimony of Ronald C. Harris—direct	[800]	314
—cross	[807]	318
—redirect	[812]	321
Testimony of Richard P. Brown—direct	[813]	322
—cross	[817]	324
—redirect	[820]	326
Testimony of Jack R. Thomas—direct	[823]	326
—cross	[833]	331
—redirect	[852]	342
Testimony of John F. Falkenberg—direct	[865]	342
—cross	[870]	345
Testimony of Royce Clark—direct	[875]	346
—cross	[877]	347
Testimony of Philip H. Hogue—direct	[882]	350
—cross	[911]	367
—redirect	[924]	373

MING–POSSIBLE BLURRED PAGES

		Page
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 11, 1971:		
Appearances		374
Testimony of Norman M. Postles—direct	[929]	374
—cross	[932]	376
—redirect	[936]	378
—recross	[936]	378
Testimony of Lester R. Pagels—direct	[938]	379
—cross	[940]	380
—redirect	[944]	382
Testimony of Nevins D. Baxter—direct	[945]	383
—cross	[1071]	442
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 12, 1971:		
Appearances		464
Testimony of Nevins D. Baxter (continued)		
—cross	[1122]	464
—redirect	[1153]	481
—recross	[1161]	486
—re-redirect	[1163]	487
Testimony of Dale Hinman—direct	[1165]	488
—cross	[1168]	489
Testimony of Harry Bloom—direct	[1199]	490
—cross	[1202]	492
—redirect	[1203]	492
—recross	[1204]	493
Testimony of Walter C. Emery—direct	[1207]	493
—cross	[1211]	495
Testimony of Philip H. Hogue—direct	[1264]	501
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on May 13, 1971:		
Appearances		503
Testimony of William P. Lober—direct	[1274]	503
—cross	[1277]	505
Testimony of William J. Tracy—direct	[1278]	506
—cross	[1281]	508
Plaintiff's exhibits:		
P-2		509
P-3		511

	Page
P-4	531
P-5	551
P-6	557
P-7	568
P-8	570
P-9	582
P-10	595
P-11	607
P-12	619
P-13	655
P-14	695
P-15	730
P-16	772
P-18	777
P-21	782
P-22	783
P-23	792
P-24, pp. 765-767, 831	835
P-25	838
P-26	849
P-27	863
P-28	881
P-29	884
P-30	887
P-31	889
P-32	890
P-40	892
P-41	1033
P-42	1042
P-43	1049
P-45	1051
P-46	1053
P-47	1055
P-48	1057
P-49	1059
P-50	1061
P-51	1063
P-52	1065
P-53	1067
P-54	1069
P-55	1071
P-56	1073
P-57	1075

ING-POSSIBLE BLURRED PAGES

	Page
P-58	1077
P-59	1079
P-60	1081
P-61	1083
P-62	1085
P-63	1087
P-64	1088
P-65	1089
P-66	1090
P-67	1091
P-68	1092
P-69	1093
P-70	1094
P-71	1095
P-72	1096
P-73	1097
P-74	1098
P-75	1099
P-76	1100
P-77	1101
P-78	1102
P-79	1103
P-80	1104
P-81	1105
P-82	1106
P-83	1107
P-84	1108
P-85	1111
P-86	1114
P-87	1117
P-88	1118
P-89	1119
P-90	1120
P-91	1121
P-92	1122
P-93	1122
P-94	1123
P-95	1124
P-96	1125
P-97	1125
P-98	1126
P-99	1126

BOOK TOO LARGE FOR FILMING—

	Page
P-100	1127
P-101	1127
P-102	1128
P-103	1128
P-104	1129
P-105	1131
P-106	1133
P-107	1133
P-108	1134
P-109	1135
P-110	1137
P-111	1138
P-112	1139
P-113	1140
P-114	1142
P-115	1144
P-116	1146
P-117	1148
P-118	1150
P-119	1152
P-120	1152
P-121	1153
P-122	1154
P-123	1155
P-124	1156
P-125	1157
P-127	1158
P-128	1181
P-129	1185
P-130	1187
P-131	1189
P-132	1191
P-133	1191
P-134	1192
P-135	1192
P-136	1193
P-137	1193
P-138	1194
P-139	1194
P-140	1195
P-141	1195
P-142	1196

OSSIBLE BLURRED PAGES

	Page
P-143	1198
P-144	1198
P-145	1199
P-146	1222
P-147	1225
P-148	1228
P-149	1229
P-150	1229
P-151	1230
P-152	1230
P-153	1231
P-154	1232
P-155	1233
P-156	1234
P-157	1234
P-158	1235
P-159	1237
P-160	1237
P-161	1238
P-162	1238
P-163	1239
P-164	1240
P-165	1249
P-166	1252
P-167	1255
P-168	1258
P-169	1258
P-170	1259
P-171	1259
P-172	1260
P-173	1261
P-174	1262
P-175	1262
P-176	1263
P-177	1263
P-178	1264
P-179	1265
P-180	1265
P-181	1266
P-182	1266
P-183	1267
P-184	1269

BOOK TOO LARGE FOR FILM

	Page
P-185	1270
P-187	1281
P-188	1294
P-189	1294
P-190	1295
P-191	1296
P-192	1297
P-201	1298
P-202	1299
P-203	1301
P-204	1303
P-205	1304
P-206	1305
P-207	1305
P-209	1306
P-210	1306
P-211	1307
P-212	1308
P-213	1309
P-214	1311
P-215	1313
P-216	1314
P-217	1315
P-218	1316
P-219	1317
P-220	1318
P-232	1319
P-233	1320
P-234	1321
P-235	1322
P-241	1323
Defense exhibits:	
D-1	1329
D-2	1337
D-3	1371
D-4	1373
D-5	1375
D-6	1376
D-7	1379
D-8	1380
D-9	1381
D-10	1382

NG–POSSIBLE BLURRED PAGES

	Page
D-11	1383
D-12	1384
D-13	1385
D-14	1386
D-15	1395
D-16, p. 1	1396
D-17	1396
D-18	1421
D-19	1429
D-20	1618
D-21	1621
D-22	1623
D-23	1625
D-24	1626
D-25	1640
D-26	1651
D-27	1652
D-28	1653
D-29	1661
D-30	1662
D-31	1664
D-32	1669
D-33	1671
D-34	1679
D-35	1688
D-36	1689
D-37	1690
D-38	1691
D-39	1692
D-40	1693
D-41	1694
D-42	1695
D-43	1702
D-44	1709
D-45	1710
D-46	1711
D-47	1712
D-48	1713
D-49	1729
D-50	1737
D-51	1743
D-52	1750

BOOK TOO LARGE FOR FIL

	Page
D-53	1760
D-54	1764
D-55	1794
D-56	1795
D-57	1796
D-58	1797
D-59	1798
D-60	1799
D-61	1800
D-62	1801
D-63	1802
D-64	1803
D-65	1804
D-66	1804
D-67	1805
D-68	1814
D-69	1815
D-70	1827
D-71	1880
D-72	1896
D-73	1911
D-74	1927
D-75	1961
D-76	1968
D-79	1988
D-80	1990
Transcript of proceedings held before the Hon. William E. Doyle, U.S. District Judge for the District of Colorado, on August 9, 1971, at Denver, Colorado:	
Appearances	1997
Testimony of Keith Anderson—direct [23]	1997
—cross [28]	2000
—redirect [29]	2001
Testimony of Roger B. Knight, Jr.—direct [30]	2002
Testimony of Bruce Alexander—direct [33]	2003
—cross [36]	2005
Prosecution exhibits:	
P-242	2009
P-243	2020
P-244	2022
P-245	2023

ING-POSSIBLE BLURRED PAGES

Page

Order of the district court dated August 27, 1971, denying plaintiff's motion to reopen the record 2030

Notice of appeal filed by the United States on September 24, 1971 2031

Supreme Court's Order of February 22, 1972, noting probable jurisdiction 2032

BOOK TOO LARGE FOR FI

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA, PLAINTIFF, v. FIRST NATIONAL BANCORPORATION, INC., AND THE FIRST NATIONAL BANK OF GREELEY, DEFENDANTS.	Civil Action No. C-2413

RELEVANT DOCKET ENTRIES

Date	
1970	
7/8	Complaint
7/24	Answer of both defts . . Cert. of Service.
9/4	Pre-trial Conference . . (WED)
12/17	Motion of pltf. for consolidation of actions involving common question of law & fact with C-2754
1971	
1/11	Motion for leave to file amended complaint
1/15	Pre Trial conference (WED) Ordered: Motion to consolidate is taken under advisement. eod 1/18/71 Motion to amend was granted
1/29	Signed (WED) order denying motion for consolidation. eod 1/29/71
3/8	Signed (WED) order that pltfs motion for leave to file amended complaint is granted, & that the amended complaint be filed as of 1/15/71 eod 3/9/71
3/22	Hearing (WED) Ordered: set this matter for trial on 5/3/71 . . Recess . . eod 3/24/71
1/15	Amended complaint . . Cert. of Service
4/29	Pre-trial Conference (WED)
5/3	Trial to court (WED) . . 1st day . . Exhibits . . Witnesses . . Recess . . eod 5/5/71
5/4	Trial to court (WED) . . 2nd day . . Exhibits . . Witnesses . . Recess . . eod 5/5/71
5/5	Trial to court (WED) . . 3rd day . . Exhibits . . Witnesses . . Recess . . eod 5/6/71
5/6	Hearding (WED) 4th day discussion of preliminary matters . . Witnesses . . Exhibits . . Ordered:

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Motion of Deft. to dismiss is denied . . Recess to 5/10/71 . . . eod 5/7/71

5/10 Trial to court (WED) 5th day . . . Exhibits . . . Witnesses . . . Recess eod 5/12/71

5/11 Trial to court (WED) 6th day . . . Witnesses . . . Recess . . . eod 5/12/71

5/12 Trial to court (WED) 7th day . . . Witnesses . . . Exhibits . . . Recess . . . eod 5/13/71

5/13 Trial to court (WED) 8th day . . . Witnesses . . . Exhibits . . . Ordered: Pltfs. have 10 days to file supplemental findings & this matter is under advisement . . . recess . . . eod 5/14/71

6/23 Motion of Pltf. for order setting expiration date for statutory stay

7/12 Signed (WED) Memo. Opinion and Order . . . Ordered: that requested relief must be denied and that the complaint and cause of action be dismissed . . . the govt. is granted a stay of proceeding for 30 days—during this period the statutory injunction will remain in force . . . eod 7/13/71

7/22 Motion of Pltf. to Re-Open the Record, to make additional findings of fact, and to amend the judgment . . . Cert. of service.

8/4 Motion to extend the statutory stay-attached to Notice Signed (WED) on motion to extend the statutory stay, stay granted until after hearing on motion to reopen . . . Matter to be considered after that hearing. eod 8/4/71

8/9 Trial to court (WED) . . . 1st Day . . . Witnesses . . . Exhibits . . . Ordered: Pltfs. motion to reopen the record is denied . . . Motion for stay is granted for an additional 40 days from this date . . . written order to follow . . . eod 8/10/71

8/13 Signed (WED) Ordered that the statutory stay set forth in the Bank Holding Act of 1956, is continued for a period of 40 days from 8/9/71 . . . eod 8/16/71

8/27 Signed (WED) Order that the Motion to Re Open the Record, to make additional findings of fact & to amend the judgment is denied . . . eod 8/27/71

9/13 Stipulation Re judgment entered 7/12/71

9/24 Notice of appeal to the Supreme Court of the U. S. by the U. S. . . . Cert. of Mail.

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10/8 Copy of order from the Supreme Court of the U. S.— that the stay of proceedings granted by the U. S. District, Dist. of Colo. is continued pending the timely docketing of an appeal by the U. S. and the final determination of said appeal by this Court

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA, PLAINTIFF, v. FIRST NATIONAL BANCORPORATION, INC., AND THE FIRST NATIONAL BANK OF GREELEY, DEFENDANTS.	Civil Action No. C-2413 Filed: July 8, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows.

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended.

2. Each of the defendants has its principal place of business, transacts business and is found within the District of Colorado.

II

THE DEFENDANTS

3. First National Bancorporation, Inc. (hereinafter referred to as "Bancorporation") is made a defendant herein. Bancorporation is a registered bank holding company organized under the laws of the State of Colorado and maintains its principal place of business in Denver, Colorado.

4. The First National Bank of Greeley (hereinafter referred to as "First National Bank") is made a defendant herein. First National Bank is a banking association or-

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ganized under the laws of the United States of America and maintains its principal place of business in Greeley, Weld County, Colorado.

III

Trade and Commerce

5. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn aaginst demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and businesses, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase of sale or securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

6. Customers of Bancorporation subsidiary banks and of First National Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to carry on their business with, apply for, and obtain the services provided by these banks. Bancorporation's subsidiary banks and First National Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Colorado. Bancorporation and First National Bank are engaged in interstate commerce.

7. Bancorporation is the second largest bank holding company and the second largest banking organization in the

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State of Colorado. As of December 31, 1969, it controlled four subsidiary banks with aggregate deposits of about $530 million, representing almost 15 percent of the total deposits held by all commercial banks in the State of Colorado. As of that same date, these four subsidiary banks combined had total assets of about $668 million and total loans of more than $374 million.

8. First National Bank was organized in 1884. It operates its sole office in Greeley, Weld County, Colorado. As of December 31, 1969, it had total assets of $46 million, total deposits of $40 million and total loans of $27 million.

9. Weld County lies to the northeast of the Denver Standard Metropolitan Statistical Area. Weld County is one of the leading agricultural counties in the United States. Its population in 1970 is about 89,000.

10. Greeley is the commercial center for this area of broad, irrigated farmlands. Its population in 1970 is about 40,000. "Greeley" is defined as the City of Greeley proper and all adjacent urbanized areas. The "Greeley area" includes Greeley and the towns of Evans, La Salle, Peckman, Kersey, Gill, Eaton, Lucerne, Farmers and Bracewell. In the last decade both Greeley and the Greeley area have experienced substantial economic and population growth.

11. Commercial banking in Greeley is highly concentrated. As of December 31, 1969, six commercial banks operated in Greeley, three of which are subsidiaries of the same bank holding company. On that date, First National Bank held approximately 34 per cent, or the second largest share, of the total deposits held in such banks, two banking organizations accounted for about 76 percent of such deposits, and three banking organizations accounted for about 98 percent of such deposits.

12. Commercial banking in the Greeley area is also highly concentrated. As of December 31, 1969, eight commercial banks operated in the Greeley area, three of which are subsidiaries of the same bank holding company. On that date, First National Bank accounted for about 32 percent, or the second largest share, of the total deposits held in such banks, two banking organizations accounted for over 70 percent of such deposits, and three banking organiizations accounted for about 90 percent of such deposits.

13. Bancorporation is the largest holding company in Colorado which does not have a subsidiary bank operating

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in Greeley or the Greeley area. Bancorporation has the resources and interest to enter Greeley or the Greeley area by the establishment of a *de novo* bank or by acquisition of a small bank in Greeley or the Greeley area. Bancorporation is one of the most likely entrants into these markets.

14. Bancorporation has applications pending, or has announced plans to acquire, in addition to First National Bank, the following banks: The Exchange National Bank, Colorado Springs, Colorado ("Exchange"); First National Bank, Pueblo, Colorado ("Pueblo Bank"); and The Security State Bank of Sterling, Sterling, Colorado ("Security"). As of December 31, 1969, Exchange, Pueblo Bank and Security had, respectively, total deposits of $50.0 million, $53.5 million, and $24.9 million. In addition, the largest banking organization in the state, United Banks of Colorado Inc., has an application pending to acquire Colorado Springs National Bank, Colorado Springs, Colorado ("CSNB"), which as of December 31, 1969, had total deposits of $36.0 million. Pueblo Bank, Exchange and First National Bank are respectively the three largest independent Colorado banks located outside of Denver. CSNB is the fourth largest such bank.

15. Bancorporation's leading subsidiary, The First National Bank of Denver, Denver, Colorado ("FNBD"), is the largest bank in Denver, which is the state capital and financial center in the State of Colorado. FNBD is a leading source of correspondent banking services to other commercial banks in Colorado and the surrounding states. Such services are generally provided by a large metropolitan bank to local banks, and they include clearing of checks and other commercial transactions, participation in loans (usually larger loans) with the local bank, providing various forms of investment and other information and advice, providing data processing services, and providing a variety of other financial services which a particular local bank may require. As compensation for such services, the local bank maintains inter-bank deposits with its principal correspondent banks; FNBD holds substantial inter-bank deposits. FNBD has provided correspondent banking services to banks in Greeley and the Greeley area.

IV

Offense Charged

16. Defendants Bancorporation and First National Bank

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have entered into agreements which will result in acquisition by Bancorporation of 80 percent or more of the voting shares of First National Bank. On June 9, 1970, the Board of Governors of the Federal Reserve Board granted approval of the proposed acquisition.

17. The effect of the acquisition described in paragraph 16 above may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others;

(a) potential competition between Bancorporation and First National Bank in commercial banking in Greeley and the Greeley area will be permanently eliminated;

(b) Bancorporation will be eliminated as a potential entrant into commercial banking in Greeley and the Greeley area, either through chartering a new bank or acquiring a small existing competitor;

(c) potential competition will be reduced by the elimination of First National Bank as a potential member of a new holding company capable of entering commercial banking in other areas in the State of Colorado;

(d) Competition for correspondent bank services for the remaining independent banks in Greeley and the Greeley area may be reduced;

(e) This acquisition may trigger similar acquisitions of leading local banks by the leading banking organizations in the state, thereby causing various further anticompetitive effects of the type alleged herein.

(f) Potential competition in commercial banking may be reduced by the continuation of a trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the state, thereby reducing diversity in banking choices and promoting parallel policies among leading banks in local markets;

(g) Banking resources in the State of Colorado may be further concentrated in the leading banking organizations in the state, thereby enhancing the power of

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those organizations in the banking markets in which they operate.

PRAYER

WHEREFORE, plaintiff prays:

1. That the agreements described in paragraph 16 of this complaint be adjudged to be unlawful, in violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid acquisition agreements, or any similar plans or agreements, the effect of which would be to merge, consolidate, or in any other way combine the businesses of said defendants.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

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Attorney General

HERBERT G. SCHOEPKE

RICHARD W. MCLAREN
Assistant Attorney General

EUGENE V. LIPKOWITZ

BADDIA J. RASHID

PETER C. CARSTENSEN

Attorneys,
Department of Justice

CHARLES L. WHITTINGHILL

Attorneys,
Department of Justice

United States Attorney

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA, PLAINTIFF, v. FIRST NATIONAL BANCORPORATION, INC., AND THE FIRST NATIONAL BANK OF GREELEY, DEFENDANTS.	Civil Action No. C-2413 Filed: July 8, 1970

ANSWER

Defendants, First National Bancorporation, Inc. and The First National Bank of Greeley, by their attorneys, answer the Complaint brought against them as follows:

I.

1. Defendants agree that jurisdiction is properly vested in this court under section 25 of Title 15 of the United States Code to restrain violations of federal merger statutes. We deny that we have violated those statutes.

2. Defendants admit the allegations in paragraph 2 of the Complaint.

3. Defendants admit the factual allegations in paragraph 3 of the Complaint.

4. Defendants admit the factual allegations in paragraph 4 of the Complaint.

5. Insofar as plaintiff, in paragraph 5 of its Complaint, attempts to characterize the relative importance of various of the activities of commercial banks, or to suggest that certain results of their actions are relevant to a competitive analysis of their business, defendants deny the allegations. Defendants deny the relevance of the last sentence of paragraph 5, noting that the same might be said of every kind of financial institution. The proper question is whether these financial institutions compete as to particular services and if the Complaint is to be read as alleging that they do not so compete, such allegation is denied.

6. Defendants agree that they are engaged in interstate commerce.

7. Paragraph 7 of the Complaint is denied insofar as it represents that First National Bancorporation is the second

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largest bank holding company and the second largest banking organization in the State of Colorado. First National Bancorporation and United Banks of Colorado, Inc., are dwarfed by Western Bancorporation which operates in Colorado through its subsidiaries, American National Bank of Denver, First National Bank in Fort Collins, and Continental National Bank of Englewood. Western Bancorporation has resources of more than $10 billion. First National Bancorporation and United Banks do not operate outside the State of Colorado, while Western Bancorporation has only a small ($212 million) portion of its total deposit pool in the State of Colorado. Thus, the *Colorado* deposits of First National Bancorporation and United Banks are larger. This fact is, however, competitively irrelevant. The competitive effects of a merger proposal are to be measured in geographic and product markets. Commercial banking markets are essentially local ones. To the same extent that intrastate bank holding companies are able to marshal their deposits in Colorado banks in support of their operations in particular banking markets, Western Bancorporation is able to marshal its deposits from whatever state it may have accumulated them. The total amount of deposits a particular banking organization may derive from a particular state is relevant only insofar as that state comprises an actual and an actually relevant banking market. Defendants deny that the State of Colorado comprises an actual or an actually relevant banking market. Defendant First National Bancorporation denies that the deposits of its subsidiaries "represents almost 15 percent of the total deposits held by all commercial banks in the State of Colorado . . . as of December 31, 1969." In fact, including the wholesale banking function performed by First National Bancorporation's principal money market subsidiary, First National Bancorporation controls only 13.5 percent of said deposits as was well known to plaintiff prior to the filing of this Complaint. By stripping out the wholesale marketing functions of First National Bancorporation subsidiaries and concentrating on the small retail accounts with which the merger statutes are principally concerned and which constitute the overwhelming bulk of all deposit accounts in commercial banks, defendant First National Bancorporation subsidiaries are seen to have about a 6.8% share of this relevant submarket (assuming, arguendo, that

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commercial banking is a relevant line of commerce in this case, which we deny).

8. Paragraph 8 of the Complaint is admitted.

9. Defendants admit the first and third sentences of paragraph 9. Defendants admit that Weld County is the most important cattle feeding and crop producing county in Colorado.

10. Defendants admit that Greeley is the seat of Weld County, that its population in 1970 approximates 40,000 and that it has in the last twenty years demonstrated demographic and economic growth on a modest scale somewhat below state averages. Defendants note the definitions recited in the third and fourth sentences without conceding them any relevance to this litigation.

11. Defendants agree with the arithmetic plaintiff utilizes in the second and thrid sentences of paragraph 11 of the Complaint. Defendants deny that "commercial banking" is a relevant market and most emphatically deny that commercial banking in Greeley is concentrated, much less "highly concentrated." In its ordinary, or pejorative, context, the word "concentrated" as applied to an industrial structure is taken to mean that the market in question has been preempted by fewer competitive entrants than could reasonably be accommodated by the size of the geographic market or the economies of scale appropriate to that industry. Thus, two competing gasoline stations in a community of 1,500 might be characteristic of a highly unconcentrated market while ten competing gas stations in a community of 150,000 could be characterized as "highly concentrated." Or, in an industry-wide context, if the major economies of scale can be accommodated by only seven or eight suppliers (say automobile manufacture), it would be improper to speak of the industry as "concentrated" if five of these have the dominant share of productive capacity. Thus, in local banking markets, four (in Greeley) or six (in the "Greeley area") banking alternatives is a highly concentrated banking structure. Indeed, Weld county is one of the most *unconcentrated* counties in the United States in terms of banking alternatives. On June 29, 1968 there were 2,810 counties or county equivalents in the United States with populations of 100,000 or less (1960 census of population). Only *three* (3) were served by more banks than served Weld County. This remarkable fact

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is wholly inconsistent with a contention that the area is a "highly concentrated" banking market. A conclusion by the Supreme Court that the City of Philadelphia, with nearly double the deposit pool of the entire State of Colorado, was concentrated with *18 banks* is not to be taken as evidence that Colorado, with 224 banks, is similarly concentrated.

12. See the answer to the previous paragraph of the Complaint.

13. Paragraph 13 of the Complaint is denied. As pointed out in the answer to paragraph 7 of the Complaint, First National Bancorporation is dwarfed by the $10 billion Western Bancorporation which operates in Colorado through subsidiaries named in paragraph 7. There is absolutely no evidence to support the statement in paragraph 13 of the Complaint that Bancorporation is "interested[ed]" in entering "Greeley or the Greeley area by the establishment of a *de novo* bank or by acquisition of a small bank in Greeley or the Greeley area." Indeed, we specifically deny such interest or intent. Finally, the *capability* of establishing a *de novo* bank is ultimately subject to the sole discretion of the supervising bank regulatory agencies and is not within the "resources" of Bancorporation, or any other organization, to accomplish at will. Consistent with and arising out of the same economic imperatives that influenced our decision not to enter by the paths plaintiff proposes in the alternative, we have been given to understand that the bank regulatory agencies would not be inclined to act favorably upon any such *de novo* application, should any holding company in the state be so motivated.

14. First National Bancorporation admits that its Board of Directors has outstanding agreements of affiliation with the respective Boards of the banks enumerated in the first sentence of paragraph 14 of the Complaint but denies the relevance of this recitation. None of these proposals have been acted upon by the Federal Reserve Board, without whose approval the agreements cannot be consummated, nor has the option of the Department of Justice to move to enjoin their consummation been impaired. None of these proposed affiliations would in any way affect the competitive impact of *this* proposed affiliation.

Defendants admit the second sentence of paragraph 14 of the Complaint. Defendants deny that United Banks of

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Colorado is the largest banking organization in Colorado (see paragraph 7 of this Answer). As to the last two sentences of paragraph 14 of the Complaint, defendants admit that the enumerated banks are the four largest banks not already part of one of the eight holding companies in the state. If each of the four applications pending on behalf of First National Bancorporation were approved by the Federal Reserve Board and the Department of Justice (or, ultimately, a federal court), there would then be just as many banking alternatives in every banking market in the State of Colorado as there are today. First National Bancorporation's share of state deposit totals would be 17.8 percent, placing Colorado 27th among the several states when ranked by concentration of state deposits in the largest banking organization in each such state.

15. The first sentence of paragraph 15 of the Complaint is admitted except insofar as it appears to suggest that Denver is a financial center only for the State of Colorado. The second sentence of paragraph 15 of the Complaint is admitted, except insofar as it implies that "correspondent banking services" is a relevant line of commerce in this case, which is denied. The remainder of paragraph 15 of the Complaint is denied. Correspondent relationships, their functions, purposes and usages are enormously more diffuse, complex and intricate than plaintiff would have us understand.

16. Paragraph 16 of the Complaint is admitted, except that the agreements entered into to date are agreements of the respective Boards of Directors and not agreements of the respective banking institutions.

17. Generally, in response to paragraph 17 of the Complaint the defendants deny that the proposed affiliation will either substantially lessen competition in any line of commerce in any section of the country or tend to create a monopoly in any line of commerce in any section of the country. Furthermore, defendants deny that either Greeley or the "Greeley area" constitutes an economically significant "section of the country" within the intendment of the Clayton Act. Specifically, to the sub-paragraphs of paragraph 17 of the Complaint, the defendants allege as follows:

(a) Paragraph 17(a) of the Complaint is denied. Defendants admit that the potential for direct competition between a hypothetical First National Bancorpora-

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tion subsidiary and First National Bank of Greeley in commercial banking in Greeley and the Greeley area will be eliminated for the foreseeable future should the acquisition be accomplished. It is denied, however, that the elimination of competition, actual or potential, between two business entities is, in and of itself, a meaningful event under the terms of Section 7 of the Clayton Act.

(b) Paragraph 17(b) of the Complaint is denied. Defendants deny that First National Bancorporation is a reasonably probable entrant into commercial banking in Greeley or the Greeley area through chartering a new bank or acquiring a smaller, presently existing, bank in the foreseeable future. Further, the absence of First National Bancorporation from the very large group of persons and businesses with the financial resources to open or buy a small unit banking office in Greeley could not have a perceptible much less substantially adverse effect upon competition in that geographic area.

(c) It appears to defendants that this proposal begs the question. First National Bank of Greeley *is* by force of this proposed affiliation to become a member of a new holding company capable of entering commercial banking in "other areas" in the State of Colorado. First National Bancorporation is presently composed of four Denver banks. The three small suburban banks were created and staffed by First National Bank of Denver. As a practical matter then, First National Bank of Greeley is becoming, through this agreement, part of a new holding company. To argue that it should not be permitted to join one new holding company in order to preserve its capacity to join another is incongruous at best; to argue that failure to so preserve it is likely to substantially lessen competition is a proposition which will not withstand its own recitation.

(d) There is one bank in Greeley and two other banks in the "Greeley area" which are not themselves parts of substantial holding companies or defendants in this action. Together, they approximate $10 million in deposits. Since First National Bancorporation would be perfectly happy to supply such modest correspondent services as they might require, we suppose that

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plaintiff has implicitly assumed that the three small banks would reject such proffered services. We do not understand how this assumed rejection of our services can constitute a "lessening of competition," but then this proposition is not supported by any characterization of the competitive universe or any meaningful "product line." In any case, we deny that any substantial lessening of competition would result from the postulated reaction of the local banks.

(e) No bank affiliation can "trigger" any other bank affiliation. No bank may affiliate with another without the explicit approval of at least one bank regulatory agency. No bank affiliation approved by at least one bank supervisory agency can be consummated without complete and careful analysis of the competitive effects by the Antitrust Division of the Department of Justice (as that agency is required to do by statute in this industry and in this industry alone). No two banks can consummate an affiliation which is opposed by the Antitrust Division of the Department of Justice because in this industry and in this industry alone, the Department of Justice has an automatic injunction imposed by force of the mere filing of a complaint and no merger can be consummated until thirty days after the Department of Justice is advised that the bank regulatory agency has approved the affiliation.

(f) Paragraph 17(f) of the Complaint is denied for the same reason that paragraph 17(e) was denied. We also note that the "trend of acquisitions" of which this is a continuation is, insofar as First National Bancorporation is concerned, a nonexistent one. First National Bancorporation has never acquired any independent banks. The supposition that the creation (for that is what is transpiring) of banking chains in Colorado "promotes parallel policies" is a flat *ipse dixit* without warrant in the history of the industry or in the practice within the State. We deny that the development of banking chains "reduces diversity in banking choices." The number of competitive options initially remains the same in those states where branch or chain banking is becoming established, and as the developing chains become experienced with the problems associated with "branch" banking, the competitive

BOOK TOO LARGE FOR FILMING

need to grow has tended to substantially *increase* the number of banking alternatives in particular banking markets at (and sometimes before) the earliest moment such markets could support a further entrant.

(g) Paragraph 17(g) of the Complaint is denied. Banking resources in Colorado are not concentrated, nor is there any evidence that size in, e.g., Denver, has any effect upon competitive viability in, e.g., Greeley. Indeed, the United Banks of Colorado holding company, which is larger than First National Bancorporation, has operated in Greeley for more than five years and has a smaller market share today than its subsidiary had when it was "independent."

II.

1. As a second and a separate defense to the charges of the Complaint, defendants contend that even if this Court should find that the probable effect of this proposed merger might be to bring about a substantial lessening of competition or a tendency towards monopoly in a line of commerce in a section of the country, that, nevertheless, this anticompetitive effect is substantially outweighed in the public interest by the favorable impact of the proposed merger in meeting the convenience and needs of the community to be served. Under the Bank Merger Act of 1966 (12 U.S.C. § 1828(c)(7)(B) and § 1828(c)(5), this finding by the Court is a complete defense to the Complaint should the Court conclude that said Complaint was otherwise well founded:

> (c)(7)(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).
>
> (c)(5) The responsible agency shall not approve—
>
> (A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
>
> (B) any other proposed merger transaction whose effect in any section of the country may be

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substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

PRAYER

WHEREFORE, defendants pray that this action against them be dismissed; that they may have such other and further relief as the Court may deem just and proper; and, that they recover the costs of this action.

Dated: July 24, 1970.

METZGER, SCHWARZ & MCKENNA

By Eugene J. Metzger
(EUGENE J. METZGER)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 1970, I served the within and foregoing Answer upon the plaintiff by mailing a true copy of said Answer, postage pre-paid, to the following attorneys of Record for the plaintiff:

HERBERT G. SCHOEPKE, Esquire
United States Department of Justice
Antitrust Division
Washington, D. C. 20530

JAMES L. TREECE, Esquire
United States Attorney
U. S. Attorney's Office
U. S. Courthouse
Denver, Colorado 80202

/s/ Edward B. Close, Jr.
EDWARD B. CLOSE, JR.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA, PLAINTIFF, v. FIRST NATIONAL BANCORPORATION, INC. and THE FIRST NATIONAL BANK OF GREELEY, DEFENDANTS.	Civil Action No: C-2413 Filed: July 8, 1970

AMENDED COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows.

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended.

2. Each of the defendants has its principal place of business, transacts business and is found within the District of Colorado.

II

THE DEFENDANTS

3. First National Bancorporation, Inc. (hereinafter referred to as "Bancorporation") is made a defendant herein. Bancorporation is a registered bank holding company organized under the laws of the State of Colorado and maintains its principal place of business in Denver, Colorado.

4. The First National Bank of Greeley (hereinafter re-

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ferred to as "First National Bank") is made a defendant herein. First National Bank is a banking association organized under the laws of the United States of America and maintains its principal place of business in Greeley, Weld County, Colorado.

III

Trade and Commerce

5. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and businesses, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

6. Customers of Bancorporation subsidiary banks and of First National Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to carry on their business with, apply for, and obtain the services provided by these banks. Bancorporation's subsidiary banks and First National Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Colorado.

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Bancorporation and First National Bank are engaged in interstate commerce.

7. Bancorporation is the second largest bank holding company and the second largest banking organization in the State of Colorado. As of December 31, 1969, it controlled four subsidiary banks with aggregate deposits of about $530 million, representing almost 15 percent of the total deposits held by all commercial banks in the State of Colorado. As of that same date, these four subsidiary banks combined had total assets of about $668 million and total loans of more than $374 million.

8. First National Bank was organized in 1884. It operates its sole office in Greeley, Weld County, Colorado. As of December 31, 1969, it had total assets of $46 million, total deposits of $40 million and total loans of $27 million.

9. Weld County lies to the northeast of the Denver Standard Metropolitan Statistical Area. Weld County is one of the leading agricultural counties in the United States. Its population in 1970 is about 89,000.

10. Greeley is the commercial center for this area of broad, irrigated farmlands. Its population in 1970 is about 40,000. "Greeley" is defined as the City of Greeley proper and all adjacent urbanized areas. The "Greeley area" includes Greeley and the towns of Evans, LaSalle, Peckham, Kersey, Gill, Eaton, Lucerne, Farmers and Bracewell. In the last decade both Greeley and the Greeley area have experienced substantial economic and population growth.

11. Commercial banking in Greeley is highly concentrated. As of December 31, 1969, six commercial banks operated in Greeley, three of which are subsidiaries of the same bank holding company. On that date, First National Bank held approximately 34 per cent, or the second largest share, of the total deposits held in such banks, two banking organizations accounted for about 76 per cent of such deposits, and three banking organizations accounted for about 98 per cent of such deposits.

12. Commercial banking in the Greeley area is also highly concentrated. As of December 31, 1969, eight commercial banks operated in the Greeley area, three of which are subsidiaries of the same bank holding company. On that date, First National Bank accounted for about 32 per cent, or the second largest share, of the total deposits held in such banks, two banking organizations accounted for over

BOOK TOO LARGE FOR FILMING

70 per cent of such deposits, and three banking organizations accounted for about 90 per cent of such deposits.

13. Bancorporation is the largest holding company in Colorado which does not have a subsidiary bank operating in Greeley or the Greeley area. Bancorporation has the resources and interest to enter Greeley or the Greeley area by the establishment of a *de novo* bank or by acquisition of a small bank in Greeley or the Greeley area. Bancorporation is one of the most likely entrants into these markets.

14. Bancorporation has applications pending, or has announced plans to acquire, in addition to First National Bank, the following banks: The Exchange National Bank, Colorado Springs, Colorado ("Exchange"); First National Bank, Pueblo, Colorado ("Pueblo Bank"); and The Security State Bank of Sterling, Sterling, Colorado ("Security"). As of December 31, 1969, Exchange, Pueblo Bank and Security had, respectively, total deposits of $50.0 million, $53.5 million, and $24.9 million. In addition, the largest banking organization in the state, United Banks of Colorado, Inc., has an application pending to acquire Colorado Springs National Bank, Colorado Springs, Colorado ("CSNB"), which as of December 31, 1969, had total deposits of $36.0 million. Pueblo Bank, Exchange and First National Bank are respectively the three largest independent Colorado banks located outside of Denver. CSNB is the fourth largest such bank.

15. Bancorportion's leading subsidiary, The First National Bank of Denver, Denver, Colorado ("FNBD"), is the largest bank in Denver, which is the state capital and financial center in the State of Colorado. FNBD is a leading source of correspondent banking services to other commercial banks in Colorado and the surrounding states. Such services are generally provided by a large metropolitan bank to local banks, and they include clearing of checks and other commercial transactions, participation in loans (usually larger loans) with the local bank, providing various forms of investment and other information and advice, providing data processing services, and providing a variety of other financial services which a particular local bank may require. As compensation for such services, the local bank maintains inter-bank deposits with its principal correspondent banks; FNBD holds substantial inter-bank de-

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posits. FNBD has provided correspondent banking services to banks in Greeley and the Greeley area.

IV

Offense Charged

16. Defendants Bancorporation and First National Bank have entered into agreements which will result in acquisition by Bancorporation of 80 per cent or more of the voting shares of First National Bank. On June 9, 1970, the Board of Governors of the Federal Reserve Board granted approval of the proposed acquisition.

17. The effect of the acquisition described in paragraph 16 above may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others;

(a) potential competition between Bancorporation and First National Bank in commercial banking in Greeley and the Greeley area will be permanently eliminated;

(b) Bancorporation will be eliminated as a potential entrant into commercial banking in Greeley and the Greeley area, either through chartering a new bank or acquiring a small existing competitor;

(c) potential competition will be reduced by the elimination of First National Bank as a potential member of a new holding company capable of entering commercial banking in other areas in the State of Colorado;

(d) Competition for correspondent bank services for the remaining independent banks in Greeley and the Greeley area may be reduced;

(e) This acquisition may trigger similar acquisitions of leading local banks by the leading banking organizations in the state, thereby causing various further anticompetitive effects of the type alleged herein;

(f) Potential competition in commercial banking may be reduced by the continuation of a trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the state, thereby reducing diversity in banking choices and promoting parallel policies among leading banks in local markets;

BOOK TOO LARGE FOR FILMING

(g) Banking resources in the State of Colorado may be further concentrated in the leading banking organizations in the state, thereby enhancing the power of those organizations in the banking markets in which they operate;

(h) This acquisition combined with the trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the state will substantially reduce existing competition in providing correspondent banking services in Colorado, increase barriers to new entry into correspondent banking services in Colorado, and effectively foreclose the remaining independent banks in many markets from access to correspondent banking services in Colorado.

PRAYER

WHEREFORE, plaintiff prays:

1. That the agreements described in paragraph 16 of his complaint be adjudged to be unlawful, in violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid acquisition agreements, or any similar plans or agreements, the effect of which would be to merge, consolidate, or in any other way combine the businesses of said defendants.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

CERTIFICATION

I, Herbert G. Schoepke, attorney for the Department of Justice, hereby certify that the foregoing allegations and prayers truly and accurately incorporate the allegations and prayers contained in the Complaint of the United States filed July 8, 1970 in the above-entitled cause, as amended by Order of the Court under date of March 5, 1971, granting nunc pro tunc January 15, 1971, Plaintiff's Motion for Leave to File Amended Complaint.

/s/ Herbert G. Schoepke
HERBERT G. SCHOEPKE
Attorney for Plaintiff

Dated: January 15, 1971

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CERTIFICATE OF SERVICE

I, HERBERT G. SCHOEPKE, attorney, United States Department of Justice, do hereby certify that I have on this day served copies of the attached *Amended Complaint* on the attorneys of record for the defendants by mailing copies thereof to

EUGENE J. METZGER, Esquire
Metzger, Schwarz, McKenna & Kempler
One Farragut Square South
Washington, D.C. 20006

and to

EDWARD B. CLOSE, Esquire
Hughes & Dorsey
401 First National Bank Building
Denver, Colorado 80202

/s/ Herbert G. Schoepke
HERBERT G. SCHOEPKE
Attorney, Department of Justice

March 18, 1971

] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2413

NITED STATES OF AMERICA,
PLAINTIFF,

VS.

IRST NATIONAL BANCORPORA-
ON and FIRST NATIONAL BANK
GREELEY,
DEFENDANTS.

Proceedings before the HONORABLE WILLIAM E. DOYLE, dge, Presiding, United States District Court for The strict of Colorado, Courtroom D, U. S. Courthouse, Den-r, Colorado, commencing at or about the hour of 9:30 clock a.m., Monday May 3, 1971.

PPEARANCES:

HERBERT G. SCHOEPKE, *Attorney*, Department of Justice, Antitrust Division, Washington, D.C., and;

KEVIN D. BRENAN, *Attorney*, Department of Justice, Antitrust Division, Washington, D.C., and;

EUGENE V. LIPKOWITZ, *Attorney*, Department of Justice, Antitrust Division, Washington, D.C., and;

ALAN MALASKY, *Attorney*, Department of Justice, Antitrust Division, Washington, D.C., and;

CAROLYN J. MCNEILL, *Assistant U. S. Attorney*, [2] for JAMES L. TREECE, *U. S. Attorney*, 323 U. S. Courthouse, Denver, Colorado, appearing on behalf of Plaintiff.

EUGENE J. METZGER, *Attorney at Law*, Metzger, Schwarz & McKenna, One Farragut Square South, Washington, D. C. 20006, and;

EDWARD B. CLOSE, JR., *Attorney at Law*, Hughes and Dorsey, 401 First National Bank Building, Denver, Colorado; and;

CARL J. SCHWARZ, *Attorney at Law*, Metzger, Schwarz & McKenna, One Farragut Square South, Washington, D. C., and;

DONALD WILLIAMSON, *Attorney at Law*, of counsel at Metzger, Schwarz & McKenna, One Farragut Square

South, Washington, D. C., appearing on behalf of Defendants.

* * * * *

WHEREUPON, the following proceedings were had, to wit:

* * * * *

[120] HOWARD E. SMITH,

a witness called by and on behalf of plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. BRENAN:

THE COURT: Give us your full name, address and occupation.

THE WITNESS: May name is Howard E. Smith and I am from Windsor, Colorado. Manager of the Colorado Division of Eastman Kodak Company.

Q. (By Mr. Brenan) Mr. Smith, how long have you been with Eastman Kodak?

A. Approximately 37 years.

Q. How long have you been in Colorado?

A. I have been with the Colorado Division since approximately June, 1968.

Q. Where in Colorado is Kodak located?

A. In Windsor, approximately 60 miles north of Denver, about 15 miles equidistant from Greeley, Loveland and Fort Collins.

Q. Would you state why Kodak is presently locating in Colorado?

A. Very soon half of our markets will be west of the Mississippi River and this is the primary reason why we are located here.

[121] Q. And could you describe your facility over there in detail?

A. It's a strictly manufacturing facility. We are building approximately a million and a half square feet. There will be several functions. The first one is to get an operation that will be the finishing of film and paper. Now, this means simply cutting and packing. But to us it is a fairly sophisticated operation. We will also have a distribution center on the site. We will have a plastics and chemical manufacturing building on the site. Just a little bit later on,

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ly six months later, we will have a plate manufacturility.

is a facility for manufacturing synthetized aluminum for the lithographic industry.

nd are there plans for further operations to be o effect?

es, we are looking into the future—we hope to go n our manufacturing operations, starting late this pefully, and we will build a synthetizing manufacturnt. This is the operation whereby we put the light tic emulsion on either film or paper base.

When is it anticipated that—to have production of articular phase of your operation? When will it

here is a long lead time. We will start hopefully this will be 1976 before it is in operation.

Q. How long have you been constructing your fa-

We broke ground in June of 1969.

nd when is it anticipated that the facility will be ted?

t will never be completed. The operations we are about now will start producing January 1, 1972.

Maybe you misunderstood my question. When is it ated that your construction of your facilities there completed? Or, is there?

answered that. The million and a half square feet under construction now will be finished by January ady for production by January, 1972, with the ex- of the plate manufacturing building which will be y July, 1972.

es, but then you mentioned another operation that not be ready now until—I believe you said until

hat's the synthetizing operation. We will start ction of that hopefully in November of this year. re there any further plans for construction beyond

We would hope so, yes, but they're a little bit nebulous ut, the construction would mostly be the base manuig where we would actually manufacture the base, e that you put the light synthetic emulsion on.

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[123] Q. In connection with that facility, Mr. Smith, how much money will be spent for construction in 1971?

A. In 1971 we will spend $47 million.

Q. And does that represent the entire cost of the facility?

A. Hardly.

Q. How many people will Kodak employ at the Windsor site?

A. By the end of this year, by the end of 1971 we will have a thousand employees in total. If you project that out to 1975 we anticipate 2,500.

Q. Are there any projections past 1975?

A. We haven't give any specific projections beyond then. We would expect an orderly growth beyond that point.

Q. In other words 2500 people is about your maximum?

A. No, by no means.

Q. How rapidly will the—will the increase in employment be between the 1,000 at the end of 1971 and the 2500 at the end of 1975?

MR. WILLIAMSON: Objection. Counsel is testifying. Utilizing words which he has no foundation for.

THE COURT: Overruled.

Do you understand the question?

THE WITNESS: I didn't hear the other comments.

But in answer to your question it will be more or [124] less a straight line growth from 1971 through 1975.

Q. Do you presently have any employees at the Windsor site?

A. Yes, we have about 400 on the payroll now. Approximately 300 of those are at the Windsor site. The remaining people are back in Rochester. Some of them being in training.

Q. How many of those people are from Colorado?

A. Roughly half of them at the moment are from Colorado.

Q. Would you state for us what type of employees you have hired and will be hiring for your facility?

A. We will hire employees with skills all the way from those who are just trainable through those who have college degrees, technically trained people.

Q. And where are the employees which you have already hired? Will those come from——

A. I want to be sure we separate Colorado employees

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sus Rochester employees. The Colorado employees that are employing now from Colorado are from the triangle a, Loveland, Fort Collins and Greeley. And all places between. On occasion one—we will get one from a little ther.

Q. Do you anticipate that the employees that you will be ing in the future will come from the same area?

5] A. In general we would expect they would come m the same area based on our applications.

Q. How many applications have you had?

A. Well over 11,000 so far.

Q. Has your company set up any training programs for ir Colorado facility?

A. Yes, we have training programs in Rochester that I ided to a moment ago and this is for training technicians l training people in the various skills. We also are ting up training programs out here in Windsor to train in technicians and trades people. We will be setting up nagement training programs as we get more of our nagement people in operation so to speak. We are also rking with Aims College to set up training programs h them.

Q. Where is Aims College located?

A. Aims College is in Greeley.

Q. Describe the training program you will be setting with them.

A. With Aims College we will be setting up academic ining programs, if you will, for the skilled trades people. e on-hand training, so to speak—we will have to do rselves because they are not yet equipped to do that. However, you will have to teach them mathematics or in case of chemists, chemistry. This kind of thing, we will end on Aims to help us with.

6] Q. When is it anticipated that production will ac-lly start at the Windsor site?

THE COURT: January, 1972.

A. January, 1972.

Q. Mr. Smith, once production is started in what way it be increased? How rapidly will you increase produc-n?

A. I guess I can't give you a good answer to that. It be more or less in proportion to the number of people ire.

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THE COURT: How soon do you think you will be in full swing?

THE WITNESS: Well, we will be in full swing in January of 1972 with all the things that we have talked about here. Does that answer your question?

Q. (By Mr. Brenan) I think so. I think what I was driving at was whether there was going to be a start of one thing now and then a long delay before an additional increase in production.

[127] A. There won't be a long delay. As I said, our employment will be more or less straight through up until 1975 and we will be adding service-type functions in the period between 1971 and 1976, if you will.

Q. What geographic area is this facility designed to serve?

A. Well, primarily the area west of the Mississippi.

Q. Are there any additional areas?

A. Well, you obviously can't balance your production to serve just that area so we will be shipping back—some back to the eastern part of the country and some, in fact, will go overseas, just to balance out production.

Q. Thank you.

MR. BRENAN: I have no further questions, Your Honor.

CROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. Smith, I believe I heard you say that by the end of 1975 you estimated about 2500 people will be employed?

A. Correct.

Q. How many out of that 2500 people will come from the East?

MR. BRENAN: I don't think that question is clear. What does he mean by the east?

Q. East of the Mississippi.

[128] A. You mean from Rochester?

Q. Okay.

THE COURT: Back East, you mean?

THE WITNESS: We estimate 250 people—approximately 250 will come from Rochester. For the most part those will be here by the end of this year. There will be an odd one coming but essentially all will be here this year.

BOOK TOO LARGE FOR FILMING–PO

Q. And the remainder of all those employees will be drawn from the indigenous population already from the Colorado area?

A. Yes.

Q. Is it true most of the financing—not all of the financing for this plant was obtained from financial institutions in the East?

MR. BRENAN: Object to that, Your Honor. Completely outside the scope of cross-examination. Irrelevant to any testimony.

MR. SCHWARZ: He asked how much it cost and I'm trying to find out where the financing came from. This is a case involving banking in Colorado.

THE COURT: True, but I can't see where it has very much probative value.

MR. SCHWARZ: The implication from the question that Mr. Brenan brought out is that this $47 million—was that some if not all of its financing was obtained here locally. I wish to squelch that implication.

[129] THE COURT: I didn't get that impression. It seemed to me that the object here was to show the impact of this large number of people in the area and what effect it will have on the banking facilities. I don't think he sought to establish that the banks financed or were in the process of financing this building.

MR SCHWARZ: All right. I'll accept that.

Q. Mr. Smith, of the people that have come from the East, new people to work in your plant, do you know how many have settled in the Greeley area?

A. Are you speaking of those who come from Rochester now?

Q. Yes.

A. I think it's only five.

Q. Out of a total of how many?

A. About 160 have committed themselves. Now, they're not all located yet but about 160 have committed themselves to living in Colorado and of those five are in Greeley. The bulk of the rest of them are in Loveland and Fort Collins.

[130] Q. Would you expect the percentage trend of settlements in Greeley to continue?

. . . . .

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A. Based on the information we have, I see no reason for this ratio to change with respect to those people coming from Rochester.

Q. Do you know why so few settle in Greeley?

A. This is opinion. The Number One problem is odor. There are others, proximity of the mountains in Fort Collins and Loveland, if you will, but primarily the reason they haven't settled in Greeley is because of the odor. The people in the East are not used to it.

THE COURT: You mean from the stockyards.

THE WITNESS: Yes.

THE COURT: And the packing plant?

THE WITNESS: Stockyards, and I would imagine the sewage treatment plant, too.

MR. SCHWARZ: No further questions.

REDIRECT EXAMINATION

By MR. BRENAN:

Q. Mr. Smith, on cross you stated that not very many of the people who are moving out from Rochester are actually living in Greeley. In your opinion, will the location of your facility in Windsor have any economic effect on the city of Greeley?

A. Of course, it will, yes. Sure, it will, because as we hire people here in Colorado there will be a lot of Greeley people I am sure—Greeley residents, who will be working for us.

THE COURT: He is talking about the Rochester people. The percentage would be about the same.

MR. BRENAN: Yes, sir, I know.

THE COURT: He says the Colorado people don't mind the odor. They are used to it.

Q. Well, will your plant itself have any economic effect on the city of Greeley?

A. I guess the greatest economic effect is that the general contractor for the project is a Greeley contractor and that's pretty good economic impact, and, of course, we will be using—we will be using service industries as we [132] go along for supplying us with some of these items of raw materials that we don't make ourselves.

Q. You mean service industries in Greeley?

A. There will be some in Greeley, I'm sure, as well as Denver and other areas, yes.

MR. BRENAN: No further questions.

MR. SCHWARZ: No further questions, Your Honor.

THE COURT: All right, you may be excused then Mr. Smith. By the way, where do you live?

THE WITNESS: We live north of Windsor about three miles on a hilltop. We don't mind the odor so much.

THE COURT: Thank you.

* * * * *

[138] GEORGE P. EVANS,

called as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: Give us your name, address, and your occupation, Mr. Evans.

THE WITNESS: George P. Evans, Greeley, Colorado. I am executive vice president of the Greeley Chamber of Commerce.

DIRECT EXAMINATION

By MR. BRENAN:

Q. Mr. Evans, what are your duties as executive vice president of the Greeley Chamber of Commerce?

A. Supervision of the staff and overseeing the conduct of the daily program, usual management duties.

Q. And what are the functions of the Chamber of Commerce?

A. Generally speaking, economic development, progressive development of the community.

Q. Are you familiar with the City of Greeley and its surrounding communities?

A. Reasonably so.

[139] Q. Where is Greeley located?

A. Greeley is located approximately 50 miles north of Denver on Highway 85. It is in approximately the middle of Weld County and is the county seat of Weld County.

Q. What is Greeley's economic base?

A. Well, historically, Greeley's economic base was agriculture in many of its forms. It still is to a great extent.

Greeley also has quite a bit of manufacturing and otherwise employment related with manufacturing and it is an educational community as well.

Q. Is it as agriculturally oriented now as it has been historically?

A. Yes.

Q. Is there any manufacturing in Greeley?

A. Yes, there is.

Q. Is there more manufacturing in Greeley now than there was, say, ten years ago?

A. Yes, there is.

Q. Who is the major employer in Greeley?

A. At the present time the largest payroll is held by Monfort of Colorado, approximately 1,400 employees.

Q. Could you generally describe Monfort of Colorado's operations?

A. They are a cattle feeder primarily and they have a packing plant in which cattle, sheep and lambs are killed [140] and processed, shipped out.

Q. Do you know how many head of cattle they maintain in Greeley at one time?

A. Approximately 200,000.

Q. Are there other similar businesses to Monfort in Greeley?

A. To the extent that they feed cattle, yes, there are. There are no other major packing plants in Greeley.

Q. How many other feedlot operations are there in the town?

A. I am sorry, I don't know.

Q. Are there any colleges in Greeley?

A. Yes, there are two, University of Northern Colorado and Aims College.

Q. What is Aims College?

A. Aims is a two-year community college, primarily vocational in thrust.

Q. And what is the current enrollment at these colleges?

A. At the University of Northern Colorado, approximately 10,500, and Aims College, approximately 1,300.

Q. Are all of these students included in the 1970 census population figure for the City of Greeley?

A. No, they are not.

THE COURT: The 38,000 is permanent population?

THE WITNESS: Yes, Your Honor, that's my understanding [141] of it, the way the Census Bureau split them up.

Q. Are there any governmental offices located in the City of Greeley?

A. Yes, there are. The Greeley—Greeley is the county seat of Weld County. Therefore, all or a good portion of the county's employment is in Greeley proper. There are some state offices there, Bureau of Revenue, Highway Patrol, this sort of thing, and a few federal government offices as well.

Q. Are there also city government buildings?

A. Yes. Yes, there are.

Q. Are there any cultural groups or associations in the City of Greeley?

A. Yes, there are.

Q. Could you enumerate them and describe them briefly?

A. Quite briefly, most of them are based around the University. The Greeley Philharmonic Symphony is a rather well-known cultural activity. The theater groups, the musical groups and so forth that perform are usually university oriented, University of Northern Colorado oriented, although they do perform for the general public both in Greeley and the area.

Q. What is the City of Greeley's relationship to the towns which are located near it?

A. Well, it is the seat of government for the county. [142] Therefore, county business is conducted in Greeley for the towns in the—in Weld County. It also provides a great amount of the cultural activities that go on in the county and the bulk of the medical facilities are located in Greeley. Weld County General Hospital is in Greeley and the practicing physicians that are on the staff of Weld County General are basically officed in Greeley.

Q. Now, where is the town of Evans?

A. It is immediately south of Greeley. Its northern city limit is contiguous with Greeley's southern city limits on Highway 85.

Q. What's the economic basis of the town of Evans?

A. Basically agricultural.

Q. Are the residents of Evans dependent on Greeley in any way?

A. Yes, they are.

Q. Could you describe in what way they are dependent on Greeley?

A. Well, generally cultural, medical, governmental services. That is county governmental services. The bulk of the retail activity would go on in Greeley. Their retail area is not defined heavily enough to provide all the services needed in a retail community.

Q. And where is La Salle?

A. La Salle is immediately south of Evans on Highway [143] 85, as well separated from Evans by the river there. Their city limit lines are not contiguous.

Q. What is the economic base in La Salle?

A. Again agricultural. They have a small amount of manufacturing in the community as well.

Q. Are the residents of La Salle dependent on Greeley?

A. Yes, in the same general way as are the residents of Evans, with the exception that the retail activity of La Salle is a bit more pronounced than it is in Evans.

Q. Are they still, however, dependent for retailing on Greeley?

A. Yes.

Q. Where is Peckham?

A. Peckham is on Highway 85 south of La Salle. Actually it is a crossroads. It is not much of a community.

Q. What is its economic base?

A. Agricultural.

Q. Are the residents of Peckham dependent on Greeley?

A. Yes, they would be for the same services La Salle and Evans would be.

Q. Are they dependent on Greeley for retail?

A. Yes.

• • • • •

[144] Q. Forgive me if I repeat a question, but are the residents of Peckham dependent on Greeley for retail?

THE COURT: Yes, he said yes.

Q. Where is Kersey?

A. Kersey is east of Greeley on Highway 34.

Q. What is its economic base?

A. Agricultural.

[145] Q. Is it dependent on Greeley?

A. Yes, it is.

Q. For retailing?

A. In the same way that Evans and La Salle and Peckm would be, yes.
Q. Where is Gill?
A. Gill is in the southern part of the county. I am sorry an't place it exactly on the highway.
Q. Are you familiar with the economic base of Gill?
A. Yes, it's agriculture as well.
Q. And would the same——

THE COURT: Well, is this a makeup of the Greeley area at you are having him describe?
MR. BRENAN: Yes, sir.

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46] THE COURT: Well, so far he hasn't testified about nking.

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47] THE COURT: Well, he is not succeeding in showing at it's a banking area so far.

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THE COURT: He said he could not tell you anything about ll; where it's located.
Is that right?
THE WITNESS: That's correct. sir.
THE COURT: Which other ones have you got?
MR. BRENAN: We've got in the Greeley area, Eaton, Lurne, Farmers and Bracewell.
48] THE COURT: Are you able to testify concerning ose towns?
THE WITNESS: Yes, sir, I am.
THE COURT: All right. Eaton is in Larimer County, isn't

THE WITNESS: No, sir. It's north of Greeley, on Highway between Greeley and Cheyenne.
THE COURT: It's closer to Fort Collins?
THE WITNESS: No, sir, it's only eight miles out of Greeley.
THE COURT: Okay. I don't know too much either. I can't te judicial notice of Eaton although I've been there.
THE WITNESS: You have been to Erie and I haven't, so 're even.

Q. (By Mr. Brenan) On the subject of Eaton, could describe the nature of Eaton's economy?
A. Basically agricultural.

Q. Is it dependent upon Greeley for retail services as the others?

A. Yes, in the same general ways of LaSalle and the others.

Q. Where is Lucerne?

A. Lucerne is between Eaton and Greeley. And it's more or less a crossroads. It is a commercial area to a very limited extent.

[149] Q. Are the residents of Lucerne dependent on Greeley for the same retail services as the people in the other towns?

A. Yes, they are.

Q. Maybe we can shorten this. Would the same be true with the residents of Farmer and Bracewell?

A. Yes.

Q. Mr. Evans, would you consider these communities satellite communities of the City of Greeley?

A. I'd like to ask you to define what you mean by satellite?

Q. Well, in the sense that they are dependent upon the city?

A. Yes, in that sense, they are.

Q. Would you describe the nature of the economy in the City of Ault—the Town of Ault? Excuse me.

A. Well, it's basically agricultural as well as the rest of them are.

Q. Are there—is there retailing in Ault?

A. Yes.

Q. Are the residents of Ault as dependent upon the City of Greeley for retailing as the residents of these other communities?

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[150] The Witness: If you're asking if the residents of Ault are as dependent—or are—excuse me—are dependent upon Greeley for retail services, yes. I'm not qualified to make a comparison.

• • • • •

Q. Is there more retailing in Ault than there is in the other communities to the extent that the residents there are not as dependent upon Greeley as for instance the residents of Farmer, Lucerne?

A. If you say specifically Farmers and Lucerne, there

[151] is more retailing in Ault, yes. They are less dependent upon Greeley as compared to Farmers and Lucerne.

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Q. Mr. Evans, do you know the economic base of Johnstown?

A. Yes, it's basically agriculture.

Q. Is there any retailing there?

A. Yes, there is.

Q. Is there more retailing there than in the towns immediately surrounding Greeley?

A. Some, there is, and some, there is not. Some of the communities that you have mentioned are quite small and Johnstown has a better defined retail community than they.

Q. Mr. Evans, would you describe Johnstown as a satellite community of Greeley?

[152] A. In the general sense that we established a while ago, yes.

Q. Are you familiar with the economic base of Windsor?

A. Yes.

Q. What is the economic base?

A. Basically agricultural; historically agricultural.

Q. And is there a retailing—is there retailing done in the Town of Windsor?

A. Yes, there is.

Q. Could you describe to what extent there is retailing in Windsor?

A. Windsor is a self-serving community in that regard. Most of the major items of retailing can be purchased in Windsor.

Q. Are you familiar with the Town of Fort Lupton?

A. Yes, sir.

Q. What is the economic base of Fort Lupton?

A. Again, agricultural.

Q. Is there retailing in Fort Lupton?

A. Yes, there is.

Q. Would you describe the nature of that retailing?

A. Well, it's again like Windsor; basically a self-serving town for retail activity.

[153] Q. Are you familiar with the economy of Keenesburg?

A. No, sir, I'm not. I know generally that it is an agricultural area.

Q. And are you familiar with the economy of Erie?

A. No, sir, not as much as His Honor is.

THE COURT: You didn't play baseball there on Sunday.

Q. Are you familiar with the economy of Hereford?
A. Just generally; that it is an agricultural area, a ranching area.
Q. Does it have any retail activity of its own?
A. To a limited extent it does, yes.
Q. Are the people in Hereford dependent upon the City of Greeley for retail services?
A. That would call for speculation on my part. I'm not sure. It would be my supposition that they would be but——

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[157] CROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. Evans, how long have you lived in Greeley?
A. Since June 22, 1970.
Q. That is how many months? Eight months?
A. Ten months.
Q. Where did you live before that?
A. Carlsbad, New Mexico.
Q. Do you consider yourself an expert on the Greeley area?
A. Not an unqualified expert, no, sir.
Q. Do you believe that ten months' residence in Greeley qualifies you to make distinctions about which towns are more or less dependent on Greeley than others in the area?
A. Not fine distinctions, no, sir.
Q. Have you made studies on this particular question of which towns are more or less dependent on Greeley than others?
A. In a nonacademic, rather casual manner, yes.

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[158] Q. Mr. Evans, can one assume that the great bulk of the members of the Chamber of Commerce would come from Greeley?
A. Yes.

• • • • •

[160] MR. METZGER: Your Honor, this is a factual point. If we can have a letter from Mr. Freeman to the effect that

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the student population is counted, can we have the record corrected to show the facts as they are?

THE COURT: Yes. Surely.

MR. SCHOEPKE: I wouldn't object to that.

THE COURT: That's fine; whatever the fact is.

MR. SCHWARZ: No further questions.

REDIRECT EXAMINATION

By MR. BRENAN:

Q. Mr. Evans, do you feel that ten months in the City of Greeley in the capacity in which you function there are enough to know generally the economy of the area?

A. Generally, yes.

Q. And do you know why most of the members of the Chamber of Commerce come from the City of Greeley?

A. Well, obviously as our area of primary concern—this is where we do most of our solicitation for members.

MR. BRENAN: No further questions.

THE COURT: You may be excused, then, Mr. Evans, from further attendance.

(Witness excused.)

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[164] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

FIRST NATIONAL BANCORPORATION and FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

Proceedings before the HONORABLE WILLIAM E. DOYLE, Judge, Presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Tuesday, May 4, 1971.

APPEARANCES:

HERBERT G. SCHOEPKE, *Attorney,* Department of Justice, Antitrust Division, Washington, D. C., and;

KEVIN D. BRENAN, *Attorney,* Department of Justice, Antitrust Division, Washington, D. C., and;

EUGENE V. LIPKOWITZ, *Attorney,* Department of Justice Antitrust Division, Washington, D. C., and;

ALAN R. MALASKY, *Attorney,* Department of Justice, Antitrust Division, Washington, D. C., and;

CAROLYN J. MCNEILL, *Assistant U.S. Attorney,* [165] for JAMES L. TREECE, *U. S. Attorney,* 323 U. S. Courthouse, Denver, Colorado, appearing on behalf of Plaintiff.

EUGENE J. METZGER, *Attorney at Law,* Metzger, Schwarz & McKenna, One Farragut Square South, Washington, D. C. 20006, and;

EDWARD B. CLOSE, JR., *Attorney at Law,* Hughes and Dorsey, 401 First National Bank Building, Denver, Colorado; and

CARL J. SCHWARZ, *Attorney at Law,* Metzger, Schwarz & McKenna, One Farragut Square South, Washington, D. C.; and

DONALD WILLIAMSON, *Attorney at Law,* of counsel at Metzger, Schwarz & McKenna, One Farragut Square

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South, Washington, D. C., appearing on behalf of Defendants.

* * * * *

WHEREUPON, the following proceedings were had, to-wit:

* * * * *

[166] RICHARD G. WALSH,
a witness called by and on behalf of plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. SCHOEPKE:

THE COURT: Give us your name, address and occupation, please.

THE WITNESS: My name is Richard G. Walsh. I live in Fort Collins, Colorado. And I am a teacher and an economist.

THE COURT: Do you have a written statement as to his background and qualifications?

MR. SCHOEPKE: Yes, we do, Your Honor.

Q. (By Mr. Schoepke) Mr. Walsh, I show you what has been marked Plaintiff's Exhibit No. 39 for identification and ask if that is a summary of your background and experience.

A. It is. The first half of it was prepared in the year 1967 and the last half was prepared on October 16, 1970, as dated.

Q. Did you prepare those summaries?

A. I did. And they were accurate as prepared.

Q. Mr. Walsh, there is just one detail on that summary [167] I'd like you to clarify for a moment if I may, on the second page. The summary Item No. 5 indicates that you prepared for a law firm in Salt Lake City expert testimony for presentation in a private antitrust suit.

Now, I would like to ask you if you would give us a little more detail on that. Did you actually ever testify in that particular lawsuit?

A. No. This vita was prepared with the intention to testify. However, the case had not yet been before the court. After preparing the study in the case, the case was settled out of court and I never did appear.

Q. And have you ever appeared as an expert witness in any litigation?

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A. No, I have not.

MR. SCHOEPKE: Your Honor, we offer Plaintiff's Exhibit No. 39 for identification in evidence.

MR. METZGER: No objection.

THE COURT: It will be received.

(Whereupon, Plaintiff's Exhibit No. 39 was received in evidence.)

MR. SCHOEPKE: We ask that Dr. Walsh be qualified as an expert in the—in industrial organization.

* * * * *

[169] VOIR DIRE EXAMINATION

By MR. SCHWARZ:

Q. Dr. Walsh, as this is a case involving the acquisition of a bank by a bank holding company and since your proposed testimony is outlined in the answers to the interrogatories served in the case that your testimony will consist of many opinions regarding banking, the structure of banking markets and the competitive interaction between banks, can I take it that you are being offered here as an expert on those subjects.

A. Well, I am being offered as a——

THE COURT: If you know.

Q. Answer the question. It is a very simple question.

THE COURT: If you know.

A. I am being offered as an expert in the field of industrial organization.

Q. That's not my question. Are you being offered as an expert on banking, the structure of banking markets and the competitive interaction between banks, the subject of which your testimony is supposed to be concerned.

A. That question has several parts. I don't believe I am being offered as an expert on banking. I am being offered as an expert on banking market structure and the relationship between banks.

Q. Then the answer to my question is yes, you are being offered as an expert on the structure of banking markets and [170] the competitive interaction between banks, is that correct?

[171] Q. Dr. Walsh, did you prepare the second supplemental government's answer to our interrogatory regarding your testimony?

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A. Yes, I did.

Q. Then you are aware, of course, that there are many areas in here that state that you will testify as to [172] banking structure, the structure of banking markets and competition in banking, is that correct?

A. That is correct.

Q. Your answer to my original question then I believe, if I may clarify it, you do offer yourself as an expert on those subjects?

A. Right.

Q. Do you have any degrees in banking, sir?

A. I have a degree in economics.

Q. Do you have any degrees in banking economics?

A. No.

Q. Have you ever taught banking?

A. Yes, in part.

Q. In part? Banking? Would you explain what part?

A. Money and banking is a part of most courses in economics and I have taught in the field of economics for a dozen or more years.

Q. Have you taught banking then?

A. Some—not a specific course in banking, but in economics we deal with banking as a part of general commerce and industry.

Q. But you have not taught banking?

A. No, I don't claim to be a banking expert in the detailed day-to-day operations of a bank.

Q. You are, I understand, offering yourself as an [173] expert in banking markets and banking——

MR. SCHOEPKE: Again, I must object, Your Honor. He is not——

THE COURT: Sustained.

Q. Have you ever worked for a bank regulatory agency?

A. I have not.

Q. Have you ever worked for a bank?

A. No.

Q. Have you ever testified on the subject of banking?

MR. SCHOEPKE: He has answered he has never testified in any case at all.

MR. SCHWARZ: All right. I withdraw the question.

Q. Now, how then if you have not had such experience

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in banking would you know what a typical banking market is?

A. Well, the field of industrial organization deals with all industries and lines of commerce. I have studied the materials prepared by the government and prepared by the bank in this case. I don't feel that banking markets are so different as a topic from other kinds of markets that one specializing in the field of industrial organization cannot deal with it.

* * * * *

[175] Q. May I ask if all your publications have been in food related or agriculture publications or on that subject?

A. Nearly all my publications have been on the subject of industrial organization, many of which have been applied to the agricultural industry, the agricultural processing industries, the agricultural marketing industries, but the general topic is the field of industrial organization.

Q. Well, may I ask if you agree with this quotation: "The choice of criteria for bank holding company expansion cannot be settled by simple analogy to industrial merger policy."

A. Would you repeat that?

Q. "The choice of criteria for bank holding company expansion cannot be settled by simple analogy to industrial merger policy." Do you agree with that?

A. Yes, convenience and need has to be considered.

Q. No, I am speaking strictly with regard to the competitive aspects of it. Do you agree with that quotation as far as the competitive aspects of this case is concerned? Isn't it true that you are saying that you are qualified to speak to the specific questions of bank holding company expansion and banking markets on the basis of industrial—general industrial merger policy?

A. Correct.

[176] Q. Then you disagree with this quotation?

A. Read it again.

Q. I will read it again. "The choice of criteria——"

THE COURT: Never mind. Let's get on to the next one, please. I mean, you pursue it, as many as you like, to suit your sufficiencies and make your record.

MR. SCHWARZ: Well, Your Honor, I believe by Dr. Walsh's own statements he is not an expert in banking

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markets, banking competition and the subjects with which he is scheduled to testify and assumedly will testify, and on that ground I move that his testimony be excluded as not qualified expert testimony. I have some authority, if Your Honor cares to hear me on that subject.

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[177] MR. SCHWARZ: It is not his veracity, as I said, and I don't doubt his expertise in his particular field of expertise. As I understand it, he has referred to himself as an agricultural economist quite recently in some of the publications. Now, I don't doubt his qualifications in that area, but this is an entirely different subject. Banking has its own problems, its own competitive milieu, which we must examine, and we can't examine them in relation to broiler chickens, which he has written on, or macaroni manufacturing. It has particular, important differences. For that reason, I submit he is not qualified to give expert opinions which will go in the record on this case on that subject.

[178] The plaintiff, I might add, has on his staff two expert witnesses, whom although we do not agree with their views, we do not doubt their qualifications to speak on the subject of banking markets, Dr. George Hall and Dr. Harry Johnson.

THE COURT: Do you wish to make a statement?

MR. SCHOEPKE: Well——

THE COURT: Regarding the reason for submitting him? What are his particular qualifications? You know him better than I do. Why is he qualified?

MR. SCHOEPKE: He is qualified, Your Honor, because he is qualified and we have offered him as an expert in the field of industrial organization and market structure analysis, which is, as he himself has just briefly set out, a field, specialized field of economics, that deals with all industries, and the same type of analysis, same basic analysis, concentration of competitors in the markets, the relative market shares and the effect of these market shares and the concentration of market shares among the few competitors, the basic effect that this has on competition.

These are all of the things that the courts in the various Section 7 cases that we have noted in our briefs, these basic market structure elements, are the things that the courts have emphasized in their various Section 7 opinions, and

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industrial organization is a field that Dr. Walsh has [179] specialized in, and it is a field that applies the same analysis to all industries. He is not a banking expert in the sense that he can take the stand and explain how you run a bank from the inside or how you organize a credit department or things of that sort, or he is not a financier. He is an industrial organization man concerned with market structure analysis and all of the banking cases and the Philadelphia case indicate that this is one of the basic elements in judging the competitive implications of a banking consolidation, and that is what he will testify to.

THE COURT: Very well. The objection is overruled. He may testify.

* * * * *

[181] Q. (By Mr. Schoepke) Now, Dr. Walsh, you have already indicated that you specialize in the field of economics in a field known as industrial organization. Could you tell us briefly what this field of industrial organization is?

A. Well, I can tell you what people do who work in the field. We study the relationship of buyers to each other and buyers to sellers. Sometimes the field is called market structure analysis.

Q. All right, now, in considering the problems that you deal with, what factors in general do you take into account?

A. What factors or what problems?

[182] Q. What problems?

A. Well, basically the problems, I think, of competition and monopoly; the extent of competition and monopoly. Their impact. How they affect the prices that we pay for everything; the quality of products. How they affect the distribution of power in the economy; not only economic but political, and I think the antitrust laws are developed in response to this distribution of power and I think industrial organization economists have made an important contribution to understanding these important problems.

Q. Well, now, is this field of industrial organization a field that is recognized among economists as a field of specialization?

A. It is.

Q. And is it related to any one particular industry?

A. No, it's—it cuts across all industries. No, it's no more

related to the agricultural process industries than to commerce and trade or to the basic manufacturing industries. It cuts across all industries.

Q. Now, you mentioned, I believe, a moment ago that industrial organization was concerned with market structure. Now, from that standpoint of the specialty known as industrial organization, how do you determine market structure.

A. Well, first you determine the industry, the particular product or the particular service that is offered by that [183] industry. And then we measure the market area, that is, the extent of the industry. Is it local or is it regional or is it national? And then we identify the firms in that industry and their relationship to one another.

Q. Well, in the field of industrial organization analysis, why is market structure significant?

A. Well, because it's related to their relative size, one to the other.

Q. And why is that of significance?

A. Well, their relative size determines their market power. The larger the size the more the market power; the smaller the size relative to the market, the less the market power.

Q. Now, when you measure relative market power as you express it of the various firms in a particular industry, do you have any particular phrase that you apply to the measurement after you have completed it?

A. The most frequent measure, although there are several, is concentration ratio.

Q. What do you mean by concentration ratio?

A. Well, the concentration ratio is the share of the market controlled by the leading firms.

Q. Now, in market structure analysis, how do you go about measuring the degree of concentration ratios?

A. Well, it depends on the particular industry and [184] the statistics that are available; the share of overall sales, the relative total assets, the share of plant capacity controlled by the largest single firm, perhaps the largest two firms, the largest three, four, the largest eight; even the largest 20.

Q. Now, directing your attention to the field of banking, how would you as an industrial organization specialist go about measuring the degree of concentration in banking?

A. Well, you would apply the general terms, the total assets, the deposits or loans of various kinds. These tend in general to correspond, to move in parallel ways.

Q. Now, why is the matter of concentration important in market structure analysis?

A. Well, because the number of firms and their relative size, one to another, is basic to determining the degree of competition in the market.

Q. I wonder if you could expand on that?

A. As I said before, the more concentrated the market is among the leading firms, the less likely the market is to be competitive.

Q. Well, could you tell us why in the view of industrial organization economics a concentrated market tends to be less competitive than a smaller concentrated market or an evenly-divided market?

A. Well, because of the relative power of the largest [185] firms versus the smaller ones. They can engage in more—are more likely to engage and have a capability to engage in parallel policies, for example, price leadership or service leadership of a dominant firm; where others fall, and this kind of behavior. A single firm is less likely to take independent action—competitive action in a market that is dominated by a few large sellers. You are more likely to get a cooperative kind of competition, a parallel action; we often say a live-and-let-live kind of relationship between the firms.

Q. Now, are there any mathematical guidelines for measuring concentration during the course of market structure analysis?

A. Well, there are, but it's very difficult. There are some guidelines by Bain, who is a leader in the field of industrial organization, Joe Bain. Some guidelines by Kaysen and Turner in their book, "Antitrust Economic Policy," a 1959 book, and there are some guidelines by Stigler, who is also an expert in the field of industrial organization. Probably the most widely-accepted guideline is from Kaysen and Turner, that when the eight largest firms make at least 50 percent of the market sales, then that market is concentrated. And this has some validity in industrial organization. Of course, if less than eight firms control 50 percent or more of the market, then the market is very concentrated. If [186] eight control more than 50 percent, again, it is more

than just concentrated. It's very concentrated. I think it's important to recognize in using these kinds of guidelines that they necessarily involve a comparison between the leading firms in the market and the total number of firms. That is, I think, the source of their validity.

Q. Dr. Walsh, does the theory of market structure analysis have any ultimate purpose?

A. Yes, the more widely dispersed and evenly distributed the market shares and hence power—market power, the more likely is competition to be effective.

Q. Now, in the field of your specialty in industrial organization and market structure analysis do you ever have occasion to consider corporate mergers or acquisitions?

A. Yes. I have studied and lectured on them at great length. The industrial and commercial history of the United States has been chaarcterized by merger movements.

Q. I wonder if you could just describe them very briefly.

A. One was from about 1897 to 1901 or 1902 and this was when the great trusts were put together. The steel trusts, tobacco trusts, meat packing trusts. The 1920s was a period of consolidation of firms throughout the country, leading to various consumer product lines such as baking, dairy, canning, and from 1947 to the current time, which is [187] the largest and most significant in terms of assets involved, kind of—all merger movements, and even Fortune magazine has expressed alarm at the transformation of industrial—of our industrial society by this movement.

Q. Now, as a result of your study and lecturing on merger movement or the three that you have just described, did you arrive at any conclusion as to the standards, if any, which should be utilized in judging the competitive significance or particular corporate acquisitions or mergers?

A. I have arrived at about the same conclusions as most everyone else in the field of industrial organization; that one must look primarily to market structure changes; what kinds of market structure changes,—changes in the rank of the firms, changes in their concentration, the merger history and trend in mergers and finally the effect of those mergers in actual competitive or potential competitive terms.

Q. Can you think of any other factors that you consider important?

A. Well, there are probably other factors.

Q. Have you exhausted your recollection?

A. Yes.

Q. How about the issue of actual and potential competition between the combining organizations?

A. Well, I perhaps didn't make that clear. That is [188] the ultimate consideration of any kind of merger; what are the competitive and related factors of that merger?

Q. Now, have you made any studies of any particular mergers in the course of your career?

A. Yes, I have, quite a few. As the defense counsel charged, most of these studies of mergers were in the food processing and baking and flour industries. Also, I have studied mergers in the chemical nitrogen industry.

Q. Have you had occasion to study the acquisition involved in this case, that is, the acquisition by the First National Bancorporation of Denver of the First National Bank of Greeley?

A. Yes, I have.

Q. Would you tell us what, if anything, you considered in connection with your study of this case?

A. Well, in addition to my general background knowledge of the field of industrial organization, I studied the applications of the Federal Reserve Board in the proposed mergers in Greeley and Colorado Springs and Sterling. I studied the Federal Reserve Board decisions in these acquisitions. I studied the banking statistics prepared by the government on these areas and on the total State of Colorado.

I studied economic growth statistics on these areas and those in the State of Colorado, again. And, the [189] documentary material of the banks, including their answers to requests for information and so forth.

Q. Now, in your analysis of the particular transaction that is the subject matter of this case, what industry did you use?

A. I used commercial banking.

Q. Could you tell us very briefly why you used commercial banking as the appropriate industry?

A. Well, I am no lawyer, but one reason was because of the ruling of three Supreme Court cases. I think the Supreme Court has ruled and it has been brought out before that in judging the line of commerce of this kind of merger an appropriate line was commercial banking.

Mr. Metzger: May I object to this witness testifying in this area. This is the distribution of the legal aspects of the

case. He can testify as an industrial—as to industrial economics and his theories drawn therefrom and not as to the meaning and content of the opinions of the court.

THE COURT: Sustained. I will take judicial notice of the fact as to anything that is in the decisions, including whether banking is a line of commerce.

MR. SCHOEPKE: Your Honor, I asked him to state it very briefly just as the reason that he utilized in his field. It is not my intention for him to——

[190] THE COURT: Well, he answered it. He said based on the laws as he understands it. That's all.

Q. Now, I believe you testified a moment ago, Dr. Walsh, that in analyzing the competitive effects of mergers and their significance with regard to market structure, that one of the other things that you took into account was the particular area affected that was the appropriate area within which to measure the competitive impact of the merger, and I wonder if you would tell us—did you choose any particular area within which to judge the competitive impact of this particular merger?

A. Well, I looked at the primary service area of the banks as the relevant geographic market.

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[201] Q. Now, Dr. Walsh, in connection with your analysis of the competitive implications of the Greeley acquisition itself, did you give any consideration as to whether or not there existed any direct competition between First National Bank of Greeley and the Bancorporation?

A. Yes, I did.

Q. And what materials did you consider in connection with your analysis of this particular point?

A. Well, again, I examined the same documents as before, the application to the Federal Reserve Board of the First National Bancorporation to acquire the Greeley bank, and I included examining the sources of business information prepared by the Government from the interrogatory of the defense.

Q. Dr. Walsh, I show you Plaintiff's Exhibit for Identification No. 45, 46, 47, 48, 49, 50, 51, 52, and 53, and ask if you utilized these documents in connection with your analysis of the existence of direct competition if any [202] between the Bancorporation and the First National Bank of Greeley?

A. Yes, I did.

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[203]

(Whereupon, Plaintiff's Exhibits 45 through 53 were received in evidence.)

Q. Now, Dr. Walsh, would you tell us in what way you used Plaintiff's Exhibit 45 through 53 in connection with your analysis of the degree of actual competition if any between Bancorporation and the First National Bank of Greeley.

A. Well, this shows the source of business of First National Bancorporation.

Q. Well, what are you referring to?

A. With respect to the City of Denver, with respect to the Denver SMSA area, Denver metropolitan area, with respect to Greeley, with respect to the Greeley area, and so on.

Q. What document number do you refer to?

A. Well, Document No. 45 is the first one that shows demand deposits of individuals, partnerships and corporations in First National Bancorporation as of August 31, 1970. This shows that—well, I don't know which way to go here, whether to discuss—well, primarily in the City and County of Denver, with nearly 70 percent of their total demand [204] deposits in that area of individuals, partnerships and corporations. If you include the Denver statistical area, they have 84.8, nearly 85 percent, of their total business in that area.

Q. May I interrupt just while you mention that word "statistical" area.

A. Yes.

Q. You will notice at the bottom of what is titled "Metropolitan Denver" there is in capital letters and indented the term "Denver SMSA." I wonder if you would just indicate for the Court what the meaning of that term is, "Denver SMSA."

A. This is a statistical convenience developed by the U. S. Census Bureau, which in this case when you say SMSA you mean the City and County of Denver as listed here, the City of Aurora, Adams County, Arapahoe County, Jefferson County, and Boulder County.

[205] Q. That area has been designated by the Bureau of Census as the Denver SMSA, is that correct?

A. Yes.

Q. Now, would you just for the record state what the

itials SMA stand for since that term occurs in many of ese documents?

A. Standard Metropolitan Statistical Area.

Q. So the Denver SMSA stands for the Denver Metropoli-n Statistical Area?

A. Yes.

Q. Now, will you go through these documents and indi-te as briefly as you can the significance that they had in our analysis with respect to the existence of direct compe-tion, if any, between Bancorporation affiliates and the irst National Bank of Greeley.

A. Well, I started to report on the showings of Exhibit 45 ith regard to the demand deposits of individuals, partner-ips, and corporations. In addition to what I previously id this document shows that the First National Bancor-oration had less than five-tenths of one percent of its—of ese types of demand deposits in the City of Greeley, less an five-tenths of one percent in the Greeley area. How-er, the dollar amounts in the former were $40,000 and in e latter $8,000—excuse me, $48,000. It shows also for eld County that the Bancorporation had approximately 206] one tenth of one percent or a $234,000 of demand eposits of individuals, partnerships and corporations in eld County. So I should say from that, they are not in ry direct competition with regard to demand deposits ith the Greeley bank.

With regard to Plaintiff's Exhibit No. 46, saving deposits the First National Bancorporation, again, it shows 70 rcent are in the City and County of Denver and slightly er 90 percent in the Denver metropolitan area.

Q. Dr. Walsh, perhaps we could shorten this a bit if you uld just direct your attention to the Denver metropolitan ea instead of subdividing it into the City of Denver. I ink the figures are sufficiently close so that the point that are developing can be adequately covered. If you would st point out the Denver metropolitan area and the busi-ss derived by Bancorporation in the Greeley area.

A. Yes.

Q. How about document 46? Could you state briefly how u used that in your analysis?

A. Well, it shows that there are primarily—they have ree savings deposits from the Denver metropolitan area d that they have a very small share in the City of Greeley,

$67,000 or one-tenth of one percent of their total; and in the Greeley area they have also $67,000 or one percent of the totals. However, for Weld County this rises to $325,000 or three-tenths of one percent of their total savings deposits. [207] Q. How about Plaintiff's Exhibit 47, briefly.

A. Very briefly, okay. The First National Bancorporation has 90 percent of their time deposits of individuals, partnerships and corporations in the Denver metropolitan area. They have two-tenths of one percent in Greeley, and in the Greeley area and in Weld County. With regard to the document No. 48, First National Bancorporation has 71 percent of its total loans in the Denver metropolitan area. It has however 2.1 percent or $7,129,000 in the city of Greeley. It has 2.8 percent or $9,691,000 in the Greeley area. It has 3.7 percent of its total loans in Weld County and this amounts to $12.6 million.

Q. Now, Dr. Walsh, Plaintiff's Exhibit 48 is the total loans. Exhibits 49 through 53 are various subcategories of the loans. If I may lead you a bit, is that not true?

A. Yes, sir.

Q. Can you summarize your analysis of Exhibits 49, 50, 51, 52 and 53, bearing in mind that the figures there are in the record and speak for themselves?

A. Well, they all show that First National Bancorporation primarily operates in the Denver metropolitan area and it has a slight amount of business in Greeley area.

Q. Well, if I may just direct your attention quickly to Plaintiff's Exhibit No. 53 which is concerned with loans to farmers, I wonder if you would tell us in what way you used this [208] particular exhibit in connection with your analysis?

A. Well, I suppose as you expect the Denver metropolitan area accounts for 12 percent of the loans to farmers. There are not many farmers in the Denver metropolitan area. The city of Greeley accounts for thirteen percent. Very prosperous agricultural area. The Greeley area is a local—it accounts for 16.3 percent of the farm loans or 4.7 million dollars. And Weld County accounts for 20 percent of their farm loans, $5.8 million. This indicates that with regard to farm lending the First National Bancorporation is a substantial competitor in the Greeley area.

Q. Dr. Walsh, I would like to show you what has been marked as Plaintiff's Exhibits No. 54, 55, 56, 57, 58, 59, 60,

61 and 62 marked Plaintiff's Exhibits marked for identification and if you used—ask you if you used those documents in connection with your analysis of the actual competition if any between the First National Bank of Denver and the First National Bank of Greeley?

A. Well, this shows for the——

Q. Excuse me. Did you utilize them?

A. I did.

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[216]

(Whereupon, Plaintiff's Exhibits 54 through 62 were received in evidence.)

Q. Now, Dr. Walsh, I would like to ask you if you would examine Plaintiff's Exhibits 54 through 62 in evidence and which you will note are concerned with various business items and their sources of the First National Bank of Denver and ask you in what way you considered them in connection with your analysis of the competitive issues in this case.

A. Well, I considered them in that they show for the lead bank of the First National Bancorporation, for the lead bank, the First National Bank of Denver, their distribution [217] of demand deposits, savings deposits, time deposits, of individuals, partnerships and corporations and so forth, the total loans, commercial and industrial loans, single-payment loans, real estate loans, and finally, loans to farmers.

These charts show that the First National Bank of Denver, the lead bank for the Bancorporation, primarily operates in the City of Denver and the Denver metropolitan area. For example, in the case of demand deposits of individuals, partnerships and corporations, fully 84.2 percent of its activity is in the Denver metropolitan area. Also, it shows that their share of demand deposits in the Greeley area is less than one-half of one percent and also the same for the City of Greeley, and amounting to, for the Greeley area, $45,000 as of August 31, 1970.

Would you like me to report orally the rest of these? There are some variations, particularly in the amount of activity that the First National Bank of Denver carries on in the Greeley area

Q. But would you be able to summarize this series of documents in any way, to save time?

THE COURT: Is there any area in which they are active?

THE WITNESS: Well, certainly——

THE COURT: In the Greeley area? I mean, any aspect?

[218] THE WITNESS: They have, for example, the real estate loans, 12 loans, of all classes. This is an amount of $563,000, representing 1.7 percent of their total real estate loans. They have, for loans to farmers in the Greeley area 12 loans, representing 15.4 percent of their loans to farmers total, amounting to $4,138,000, or 16 percent of their total farm loans.

Just looking at some other categories, loans to individuals, partnerships and corporations on an installment basis, are very small, only 28 in the Greeley area, amounting to $51,000, and only .3 of one percent of their total loans in that category.

[219] In the case of commercial and industrial loans, again, it's rather sizable to the Greeley area. It amounts to fully 2.7 million dollars or two percent of all the commercial and industrial loans of the First National Bank. Generally, small loans, by summing up. As to the share of business activity of the First National Bank in the Greeley area and also in the City of Greeley. And, also in Weld County; very minor.

THE COURT: So then you would conclude that the First National Bank of Denver is not a strong competitor?

THE WITNESS: But, to the extent they have these operations, although it's not a strong competitor, it's on the edge of the Greeley area market. As these numbers of intrusions, as we have just——

THE COURT: But you say they are no competitor—no competitive factor, really, as you know of now?

THE WITNESS: No direct competition, I would be willing to conclude.

Q. (By Mr. Schoepke) None whatever?

A. Well, only a very small amount of direct competition.

Q. I would ask you to look briefly at Plaintiff's Exhibit 38 and ask you whether you used this in connection with your analysis of the degree of direct competition if any between First National Bank of Denver and the First National Bank

of Greeley, and in that connection I direct [220] your attention to Pages 8—8 and 14——

* * * * *

[222] MR. SCHOEPKE: Those would be 33, 35, 37 and 38 we offer in evidence, Your Honor, as plaintiff's exhibits subject to the protective orders requested by the defendants.

THE COURT: These are not to be utilized as a matter of record at any time?

MR. METZGER: Yes, Your Honor. In order that we may be entitled to the protective order, the Court would have to order that the clerk seal these particular documents and we respectfully request the Court to so order.

THE COURT: They can't be referred to in the course of argument or decision, is that right?

MR. METZGER: Yes, Your Honor.

MR. SCHOEPKE: Without further order of the Court or on application.

[223] THE COURT: Fine with me. I don't know what good they are then.

MR. METZGER: Customers tend to be very sensitive about bandying their names about, Your Honor.

MR. SCHOEPKE: Well, with the protective order, Your Honor—I perhaps need a little education. Does Your Honor anticipate that we can refer to them generally without going into the confidential specifics that the defendants are concerned about?

THE COURT: The identification, that's what he's objecting to; specific identification.

(Whereupon, Plaintiff's Exhibits 33, 35, 37 and 38 were received in evidence.)

Q. (By Mr. Schoepke) Now, referring, Dr. Walsh, to Plaintiff's Exhibit 38 in evidence, calling your attention to pages marked as 8 and 14 thereof, would you indicate without mentioning any names or otherwise identifying the individuals or organizations there indicated, would you indicate in what way you used this particular Plaintiff's Exhibit Number 38 in connection with your analysis concerning the competitive aspects of the proposed merger or proposed acquisition?

A. Well, this shows that the First National Bank of Denver has direct loans in its correspondent bank department.

Q. Why don't you count the number?

[224] A. Some 15 medium to large-size operations, primarily in the feeding and feedlot area—in the Greeley area. I see that a couple of them extend throughout Weld County. But most of them are in the Greeley area. These are medium to large-sized lending operations.

I see on page identified as 14 of Document Number 38 that they reply that they have solicited commercial banking business from some 11 present merchants in Greeley and these will be primarily small to medium-sized retailing and commercial operations, although there are a couple here that are fairly large organizations, although I think they are calling on the regional office of the—the local offices of these large organizations. So, they show that this latter—this latter list shows that the First National Bank indeed solicits business in Greeley and the Greeley area.

Q. Now, I would now show you Plaintiff's Exhibit Number 37 in evidence and ask you, directing your attention and admonishing you not to indicate names or amounts, and directing your attention particularly to pages designated as 5 and 6 to this interrogatory answer in what way you used this particular exhibit in connection with your analysis of this case?

A. This is a list of the trust accounts originating in Weld County and nearby counties. It shows that in Weld County the First National Bank of Denver has four living [225] and personal trusts and we might go through—there are a small number of various other kinds of accounts—the total being eight for testamentary trusts.

Q. No, that's for four counties.

A. Two testamentary trusts in Weld County. Five escrow accounts in Weld County; only one custody account and one investment banking account. Excuse me, that's in Logan County. No investment banking account in Weld County. I guess they also list the dollar amounts involved, but it isn't a substantial amount of money.

Q. Now, Mr. Walsh, in connection with these documents that we have just been discussing, namely, Plaintiff's Exhibits 45 through 53 in evidence and 54 through 62 in evidence, 38 in evidence, 37 in evidence, and 40 in evidence, did you reach any conclusion with regard to the effect that the proposed acquisition of the First National Bank of Greeley would have in terms of actual competition?

A. Yes. There is some direct competition, no doubt about it. But, on balance, it's relatively small or insignificant. Some direct actual competition will of necessity be eliminated by this merger. It's relatively minor. And will not cause me concern as a market structure economist. That is, in terms of the market structure analysis, essentially they operate in two different markets; one basically in the Denver market and the other basically [226] in the Greeley market.

Q. Did this evidence indicate to you anything with regard to the proximity of the organizations to the markets in which they operate?

A. Well, they're on the edge of each other's markets, and this is shown by the solicitation of business, the amount of business of varied categories in each other's market. The evidence is quite clear on that to me as an economist.

Q. Now, Dr. Walsh, in your analysis of the competitive effects of the Greeley acquisition itself, did you consider any factors other than actual competition between Bancorporation and the First National Bank of Greeley?

A. Yes, I did. I considered potential competition.

Q. And could you tell us why did you consider potential competition in your analysis of this particular acquisition?

A. Well, this kind of merger is known in the field of industrial organization as a market extension merger. And in market extension mergers or acquisitions the issue of potential competition is the important one.

Q. Now, you mentioned the term market extension merger—I wonder if you could just tell us briefly what you mean when you use the term market extension merger?

A. There are two kinds, one is a product market [227] extension merger, meaning the joining of two related but different products or services. And the other is a geographic market extension merger which joins firms producing the same product but in different markets.

Q. When you say with regard to a geographic market extension merger, you said in two different markets. In two different what kind of markets?

A. Product markets; where they——

Q. No, no. I'm speaking of geographic market extension merger.

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THE WITNESS: Didn't I define geographic market extension merger?

Q. Would you start again and define what a geographic market extension merger is?

A. Firms producing the same product or service but operating in two different markets joined together. This is a geographic market extension merger.

Q. Now, what category does the present acquisition of the First National Bank of Greeley fall in?

A. Well, this is a geographic market extension merger.

Q. And why?

[228] A. The First National Bancorporation in the Denver market seeks to extend its operations by acquiring the First National Bank of Greeley into the Greeley market area. This extends their geographic operations.

Q. Now, you indicated a moment ago that in a market extension merger that potential competition was the important thing to be considered under an industrial organization or market structure analysis. Could you tell us what is a potential competitor as you use the term?

A. There are three main determinates: one, resources, a potential competitor has to have size; resources, capability to enter the market if he wishes, without a merger of a major bank already in that market. The second is incentive. The potential competitor has the incentive to enter the market because of growth or attractive—economic attractive kind of market; and third, he has a relative capability. This is in relationship to the potential capacity of others outside the market that might be potential entrants.

MR. SCHOEPKE: May I have a moment, Your Honor, just to get my documents out?

[229] THE COURT: Well, the most that can be said is that it possesses a possible threat to competition which might develop in the future?

THE WITNESS: I agree, Your Honor, that's one of the——

THE COURT: Well, it doesn't possess any threat to any present competition because there isn't any, substantially, trifling, is that right?

THE WITNESS: I wouldn't go so far as to say there isn't any, but it is a minor element in that market.

THE COURT: It is insubstantial, is that right?

THE WITNESS: It is interesting, however, to observe that

First National Bank does in fact serve as an alternative to Greeley area purchasers of banking services with regard to the various banking services that they provide. They are more of an alternative with regard to some of those banking services than others. That's why we do not say banking competition. I do say, however, that they are an alternative to the Greeley banks in providing the services and I should think not an unimportant alternative. I don't know about the use of the word "substantial" in legal terms.

THE COURT: Well, perhaps to the extent that it is a lending institution that has enough money to make a big loan, is that right?

THE WITNESS: Well, it certainly has that.

THE COURT: At least to get one, if they don't [230] have the money to loan at the time?

THE WITNESS: Certainly, and in saying that, Your Honor, I think you are saying they have the potential to make large loans in the Greeley market and they are currently using that potential in that market.

THE COURT: But you can't go further than that, I take it?

THE WITNESS: I wouldn't call it substantial direct competition.

Q. Now, Mr. Walsh, I would like to show you Plaintiff's Exhibit 21 for identification, and ask you if you used that in connection with your analysis?

A. I did.

Q. MR. SCHOEPKE: If Your Honor please, we offer Plaintiff's Exhibit No. 21 for Identification into evidence.

MR. METZGER: We have no objection to the document, Your Honor, save as to the staleness of the data. We have documents which are year end 1970 which I think would be more use, but no objection.

THE COURT: Very well, it will be received.

(Whereupon Plaintiff's Exhibit No. 21 was received in evidence.)

MR. SCHOEPKE: Your Honor, these are the ones that are closest to the merger and our inquiry is as of the date of the merger.

[231] THE COURT: The only purpose is to support your allegation that there is concentration in the Denver banks?

MR. SCHOEPKE: That is one of the purposes. Yes, this indicates the degree of concentration in the Denver market.

Q. Now, could you just tell us briefly, Dr. Walsh, in what way you used Plaintiff's Exhibit in Evidence No. 21 in connection with your analysis as to whether the Bancorporation, First National Bancorporation of Denver, had the resources to enter the Greeley market, should it desire?

A. Well, this shows that the First National Bank of Denver is the largest bank in the Denver market. It is also the largest bank in the State of Colorado.

MR. METZGER: Your Honor, I believe that the answer to this complaint conceded that we have the resources to enter this market and that this question is not in issue.

THE COURT: Very well. That takes care of that, I guess.

MR. SCHOEPKE: Takes care of that. Well, then may I offer in evidence as fundamental background information Plaintiff's Exhibit 15, which is the 1969 annual report of the First National Bank of Denver.

Q. Dr. Walsh, I would like to show you Plaintiff's Exhibit No. 15 and direct your attention to——

THE COURT: Wait a minute——

[232] MR. METZGER: If it is being offered in support of the proposition just advanced, I believe we have conceded it.

THE COURT: Well, I suppose he can offer it anyway, if he wishes. You don't dispute its authenticity, I take it?

MR. METZGER: No. Your Honor, simply one of the basic elements of our case is that not only we but just about any entrepreneurial group in Colorado has the financial resources to enter Greeley de novo. These are very minimal dollar figures and we concede that anybody has that ability. In fact we contend it.

THE COURT: Well, we will receive it.

(Whereupon, Plaintiff's Exhibit No. 15 was received in evidence.)

THE COURT: I suppose they may be able to use it for any purpose they wish. Is this a recent financial statement, annual statement?

MR. SCHOEPKE: Yes, and it is of particular significance——

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THE COURT: What year?

MR. SCHOEPKE: For 1969, and on Page No. 8 of that is a ten-year growth record of the First National Bank of Denver, which we believe supports our basic position in this case.

Q. Now, we would also at this time show Dr. Walsh Plaintiff's Exhibits for Identification 18, 20 and 19, and ask [233] whether he used these particular tables in connection with his analysis as to the resources?

A. Yes, I did.

Q. Of the First National Bank to enter the Greeley market, should it wish?

A. Yes, I did.

• • • • •

[238] MR. SCHOEPKE: Just the continued growth of the First National Bank of Denver and its maintenance of its lead as the largest bank in Denver, and also the largest bank in the state, thereby by definition qualifying it as the organization most likely to be a potential entrant in Greeley [239] simply because of its size relative to its other competitors.

THE COURT: Well, I think they will stipulate to its size and its steady growth and its being the largest banking institution in Colorado.

MR. METZGER: Yes, Your Honor, and there is a document the government has not objected to, our Exhibit No. 3 which lists from 1960 to 1970 deposits in each of the banks of Denver.

• • • • •

[240] Q. Now, Dr. Walsh, we have covered the subject of resources and I believe you indicated in response to my question as to what one of the attributes would be that would constitute in your view a significant potential entrant or potential competitor was incentive. I wonder if we might direct our attention to this subject of incentive at this time, and I would ask you if you have examined any material in connection with your analysis as to whether an incentive was present for the First National Bancorporation to enter the Greeley market as a significant potential entrant?

MR. METZGER: May it please the Court, I object to the testimony of this witness of an incentive on the part of

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somebody else without demonstrating that he has some private knowledge as to what that person was thinking.

MR. SCHOEPKE: Well, that is subjective, Your Honor. I am asking this witness to testify with regard to the various growth data of the City of Greeley, its prosperity and attractiveness and so forth as an objective indicia that would lead a reasonable bank to have the incentive. As the court in the Penn-Olin case, which was a potential competition case, [241] indicated the primary test is objective, not subjective.

MR. METZGER: As the Court is aware, not only I but the Supreme Court disagree with counsel's representation as to what the court said. I simply do not think he is competent to testify as to what the incentives of the bank are. I do not think he is competent to testify to that.

Q. Well, Dr. Walsh, with regard to incentive, what in your view as a market structure analyst would you consider as appropriate indicia to indicate the probability of incentive to enter a particular market, in a geographic market extension case——

MR. METZGER: Objection, Your Honor, counsel is suggesting that the appropriate criteria for evaluating the incentive of a bank to enter a market are economic and statistical data. The Supreme Court in the Penn-Olin case made it very clear that the expressed intentions of the institution involved were the relevant considerations, and on that grounds decided the case. We do not think it appropriate——

THE COURT: Well, that could be that it would be conclusive. I don't know. I will have to take a look at that case, but that doesn't prevent them from presenting evidence as to objective elements that would lead a reasonable or rational person to want to get into the game, so to speak.

MR. METZGER: Not at all, Your Honor.

THE COURT: That's all he is bringing out now, as I [242] view it.

MR. METZGER: Counsel is inquiring into the incentives of a bank to enter the market.

THE COURT: What are the features that are attractive, that's all he is asking.

MR. METZGER: Fine, to that I have no objection.

THE COURT: All right.

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Q. Dr. Walsh, what are some of the features that would be attractive to a significant potential entrant in a market extension case?

A. Rapidly growing economy, one of increasing trade and commerce, perhaps increasing manufacturing, perhaps increasing cattle feeding, increasing population, these kinds of factors that account for market growth and development which lure banks lead to expansion of bank operation.

Q. Did you examine any data in connection with your analysis of these particular factors vis-a-vis the Greeley area?

A. Yes, I did.

Q. Dr. Walsh, I show you Plaintiff's Exhibits for Identification 87, 88, 89, 90, 91, 92, 93, 94, 95, 96 and 97, which you will note are all concerned with the City of Greeley, and ask if you utilized these particular exhibits at all in connection with your analysis of the attractiveness of the Greeley market?

[243] A. Yes, I did.

MR. SCHOEPKE: Here are Your Honor's copies, sir.

(Counsel handed exhibits to Court.)

[244] MR. SCHOEPKE: In view of the fact that the witness has used these in his analysis, I respectfully move that these plaintiff's exhibits, 87 through 97 for identification, be received in evidence.

* * * * *

[246] THE COURT: 87 through 97, inclusive, are received.

(Whereupon, Plaintiff's Exhibits 87 through 97, inclusive, were received in evidence.)

Q. Now, Dr. Walsh, I would like to ask you if you would go through Plaintiff's Exhibits 87 through 97, inclusive, and indicate in what way you used them in your analysis of the City of Greeley as a banking market?

A. Well, Document 87 shows that the population of Greeley increased from 26,300 in 1960 to 38,900 in 1970.

Document 89 shows that there was a 47.8 percent increase in population over the past ten years for the City [247] of Greeley.

Q. Did you carry it back beyond ten years?

A. Document 89 carries it back for decades, running it

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back to 1920, which would be a 50-year period. The City of Greeley has increased in population by 255 percent. Also, as shown on Document 89, is a comparison with the State of Colorado population increase and the increase of the United States. The City of Greeley population growth is nearly double that for this whole State of Colorado, which had a population growth of only 25.8 and nearly four times that of the growth of the United States as a whole, which is 13.3 percent over the last decade. Also shown in Document 89 is the greater population growth for Weld County as compared to the other counties mentioned just a moment ago. Weld County has had a population growth of 23.4 percent in the last ten years. El Paso County has grown at nearly three times that rate, 64.2 percent. Boulder County has grown even more, 77.6 percent, and Logan County has had a slight decline, 7.1 percent, in the last ten years.

Q. How about Plaintiff's Exhibit Number 90 in evidence?

A. This shows gross sales, 1960 to 1970 in Weld County and in the City of Greeley. It shows that for the City of Greeley gross sales increased from 95.8 million in 1961 to 55.8 million in 1970, or an increase—a percentage [248] increase of 282 percent. It shows for Weld County nearly as large an increase of gross sales or gross business activity increasing from 148.7 million in 1961 to 444.2 million in 1970. A 215 percent increase over the period.

Q. I believe that's 219 percent, is it not?

A. 219.6 percent.

Q. How about Plaintiff's Exhibit Number 91?

A. Exhibit 91 shows the growth in retail sales from 1960 to 1970, not quite as rapid as gross business activity. As a matter of fact, one-third as rapid. Retail sales for the City of Greeley increased from 82 million in 1961 to 162 million in 1970; nearly doubled. Similarly, in Weld County the increase was from 121 million in 1961 to 226 million in 1970, a 94 percent increase in retail sales.

Shall I just continue?

Q. Yes, just continue on as rapidly as you can, Dr. Walsh.

A. All the indicators are up. Exhibit Number 92 shows that electric power consumption has increased from—in this case from 54.7 kilowatt hours to 152.6 kilowatt hours, ten years later. 178.7 percent growth in electric power con-

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sumption. That's a good indicator of consumption of energy as is the next one—or not quite the next one. Later—a later document in this series.

Document 93 shows the increase in number of [249] telephones, which kind of follows along, although it is a much lesser rate than the other indices. It shows the telephones increased in the City of Greeley from 11.5 thousand in 1960 to 17.5 thousand in 1970, a 51 percent increase over the ten-year period.

The Document 94 shows——

Q. Dr. Walsh, these figures are on the record, of course, and in your comments I think perhaps we might save time if you could concentrate on the percentage increase unless counsel for defendants object.

A. Okay.

[250] Q. Now, Document—Plaintiff's Exhibit No. 94 in evidence.

A. This shows for postal activity for the City of Greeley 44 percent increase over the last ten years in number of daily deliveries. Exhibit 95 shows for rural deliveries, out of the Greeley office an increase of 27 percent over the last ten years.

Exhibit 96, again for the City of Greeley, shows the increase in the number of water taps—a percentage increase from 1960 of 36.9—37 percent.

Exhibit 97 shows that for building permits issued for residential building, both single and family and apartments this shows substantial construction activity throughout the period with some ups and downs. For example, in 1970 there were 358 apartments units constructed at a cost of $3.4 million, and this is substantially more than any of the activity in previous years in the department of construction. The same thing is true for single-family dwellings in 1970, substantially larger number of single-family dwellings constructed. 256. Total value, $4.9 million. Generally a substantial construction activity in that area.

I was just visiting the area last week and noted the large number of apartment houses going up, and I was quite amazed.

Q. Now, as a result of your study of Plaintiff's [251] Exhibits in Evidence 87 through 97, inclusive, Dr. Walsh, did you come to any conclusion with regard to the economic condition of the City of Greeley?

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A. It's a boom town. It's a rapidly growing community. It's a tremendous growth area, you know. It's just tremendously attractive to a banker in the growth market. And, to an economist by the way too.

Q. Now, Dr. Walsh, I show you Plaintiff's Exhibit for Identification No. 98, 99, 100, 101 which you will note are concerned with the Greeley area, and ask you if you considered those particular documents in connection with your analysis in this case?

A. Yes, I did.

MR. METZGER: What numbers?

MR. SCHOEPKE: 98 through 101.

* * * * *

Let me withdraw that.

[252] MR. SCHOEPKE: Your Honor, since the witness used Plaintiff's exhibits for identification 98, 99, 100 and 101 in his analysis, we move at this time that these exhibits, that Plaintiff's Exhibits 98, 99, 100 and 101 be received in evidence.

THE COURT: Subject to the correction they are received.

(Whereupon, Plaintiff's Exhibits 98 through 101 were received in evidence.)

Q. Dr. Walsh, would you go through Exhibits 98 through 101 and tell us as rapidly and as briefly and as cogently as you can how you used these particular documents in connection with your analysis of the economic attributes of the Greeley area, in quotes.

A. The Greeley area includes these surrounding small towns within roughly a ten-mile radius. And it shows population is growing there as one would expect in this kind of a [253] greater Greeley area, but not as rapidly as in the city population. The city population increased nearly 30 percent during the last ten years. 45,228 to 58,500. That's shown on Plaintiff's Exhibit No. 98.

Electric power consumption for the Greeley area shows a substantial increase from—well, it increased by 115 percent over the ten-year period in greater Greeley area.

Telephone installations, the number of main telephones increased by 48 percent, nearly 50 percent; nearly half again over the ten-year period.

Q. What do you mean? Are you referring to——

A. That's the document 99.

And gas sales in the Greeley area includes these surrounding towns to the city of Greeley, they showed substantial growth. This too is an indication of energy consumption as is electricity and there is an indication of economic activity. The volume increase of natural gas consumption increased by 127 percent over the ten-year period.

Q. To which document are you referring now?

A. That's Document No. 100.

Q. And I believe you commented a moment ago on electric power consumption in the Greeley area? I don't believe you mentioned specifically the document that you were referring to. Would you do so for the record, please.

A. Document 101.

[254] Plaintiff's Exhibit 101?

A. Right.

Q. Dr. Walsh, yould you tell us that what conclusion, if any, did you draw from Plaintiff's Exhibits—what conclusion—I withdraw that. I'll start again.

Dr. Walsh, would you tell us what conclusions, if any, concerning the Greeley area you drew in your analysis of Plaintiff's Exhibits in Evidence 98 through 101 exclusive?

A. Well, the area is a rapidly growing economic area and as such it would be attractive to potential entrants. It would be economically attractive. It would be an area where profits could be made. A rapidly growing area. And thus it would be attractive to outside banks.

* * * * *

[255] THE WITNESS: Economic activity, deposits, loans, and other services. A rapidly growing economic activity is very attractive to banks.

THE COURT: Potential business, I suppose?

THE WITNESS: Yes.

MR. METZGER: I'll be back to that, Your Honor.

THE WITNESS: Would you argue the reverse?

THE COURT: They're not interested in any ghost towns, I don't suppose.

THE WITNESS: I don't think so.

THE COURT: They're not going to establish a branch up at Tincup.

[256] Q. I would like to show you Plaintiff's Exhibits for Identification Numbers 102, 103, 104, 105, 106, 107, 108, 109,

110, and 111, and I would like to ask you whether you used Plaintiff's Exhibits for Identification Numbered 102 through 111 inclusive in connection with your economic analysis in this case.

MR. METZGER: Before we get to that, we have no objection to these documents, Your Honor.

A. Yes.

THE COURT: Very good, Mr. Metzger. We will take them all in evidence then without further ado, 102 through 111.

(Whereupon, Plaintiff's Exhibits 102 through 111 were received in evidence.)

Q. Now, in this connection, Dr. Walsh, you will notice that these particular documents are concerned with statistics in Weld County, and I wonder if you would go through them as cogently as you can and indicate generally in what way you used these in connection with your——

* * * * *

[257] A. Plaintiff's Exhibit 102 shows commercial development in Weld County from 1959 to 1969, an increase of 65.7 percent over the ten-year period to a level of 14,213 persons.

Plaintiff's Exhibit 103 for Weld County personal income, 1929 to 1968—I think the most relevant is the last nine years—personal income increased from 1959 to 1968 by 77 percent to a level of $211.9 million personal income in the county. These are U. S. Department of Commerce figures, and over the entire period of from 1929 this same exhibit shows substantial increase from the level at that time of $28.8 million.

The next Plaintiff's Exhibit 104 for Weld County shows total earnings by industrial sector, that is by farming broken out from total nonfarm, which in turn is broken out by government and private, and private is in turn broken down by manufacturing, mining and so on, it shows substantial growth in several of these sectors and substantial total growth. From 1950 to 1968, total earnings increased from 70.3 million to 164.6 million. I think particularly im-

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portant is the fact that manufacturing earnings grew from $2.8 million to 1950 to $18.2 million in 1968, many times increase in manufacturing.

It shows the economy is diversified. Very important I should think to stability in amount of growth. It shows that wholesale and retail trade has advanced very sharply.

Q. I wonder if I could direct your attention to the [258] second page of that, the same thing in percentage terms, and ask if you would care to direct your remarks to the second page.

A. Oh, page 2 of this document shows that farm earnings declined from 49 percent of total economic activity in 1950 to 28 per cent in 1958. It is no longer an economy dependant wholly or even substantially on agriculture, although agriculture is still very important.

It reflects government earnings have increased substantially from nearly 10 percent in 1950 to 20 percent in 1968. These are primarily people working there at the Northern Colorado University.

Q. How about manufacturing?

A. Here again manufacturing employment in the county has increased from four percent in 1950 of total employment to 11 percent in 1968, nearly a threefold increase. As a share of total activities.——

* * * * *

[269] Now, Dr. Walsh, we have discussed the resources of the First National Bancorporation. We have discussed the growth of the Greeley area, and the third factor I believe you indicated that was of significance in determining whether a firm was a significant potential entrant in a market extension case was its capability in comparison to other significant firms outside of that market. I wonder if I could direct your attention to that portion of your testimony—could you tell us—have you, on the basis of your study of the various documents in this case, come to any conclusion as to the relative capability of Bancorporation in contrast to other significant firms outside the Greeley area in terms of its position as a significant market entrant?

A. Well, there is good reason to believe that it's one of the most significant potential competitors in the Greeley market.

Q. And on what do you base that conclusion?

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A. Well, several. Geographic proximity; less than 60 miles between the two cities. There is a main four-lane highway to Denver from Greeley. Bancorporation is the largest bank in the—the single largest bank in the state and has the proximity in Denver as the lead bank and I think also in relation to other holding company banks in Denver, it—— The second largest single bank in Denver is United. It's already in Greeley. So, it rules them out. Colorado CNB Bankshares [270] is one-half the size but they potentially could I suppose. Central Bank and Trust is one-fourth the size. It is one-bank holding company which rules them out. ABC, Affiliated Bankshares of Colorado, is already in Greeley. Three banks. And all nearby. That rules them out. Western Bancorporation, an out of state holding company is prohibited from acquiring additional Colorado banks. Rules them out. First Colorado Bankshares, Denver area holding company, is one-fifth the size of the First National Bancorporation. So in terms of the relative other potential entrants I should say they are substantially larger and have substantially more capability in that regard.

Q. Would you say that they are one of the most likely entrants into the market?

Mr. Metzger: Objection, Your Honor. Calling for conclusion of the witness of which the witness has no capacity. Not an official of the Bancorporation.

The Court: Sustained.

Q. Now, in connection with the documentary evidence which you have been testifying on, have you reached any conclusion with respect to the competitive impact of the proposed acquisition by First National Bancorporation of the First National Bank of Greeley?

A. Well, the economic evidence I think is sufficient to say that it eliminates a substantial potential of competition [271] of the First National Bancorporation being on the edge of the Greeley market.

Q. Dr. Walsh, I would like to show you what's been marked for identification as Plaintiff's Exhibit Nos. 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and ask you whether you have used these exhibits in connection with your analysis of this case?

A. Yes, I have.

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Q. And in what connection have you used Government's Proposed Exhibits 73 through 86 in connection with your analysis?

A. This shows the concentration of the Greeley and Greeley area market for commercial banking.

MR. SCHOEPKE: At this time, Your Honor, I would respectfully move that Plaintiff's Exhibits for Identification Nos. 73 through 86 inclusive be admitted in evidence.

* * * * *

[272]

(Whereupon, Plaintiff's Exhibits Nos. 73 through 86 inclusive were received in evidence.)

Q. Dr. Walsh, would you tell us in what way you used Government's Exhibits Nos. 73 through 86 in connection with your analysis of this case?

A. Well, Plaintiff's Exhibit 73 shows total assets of commercial banks in the City of Greeley and Greeley area and shows that First National Bank of Greeley has nearly 35 percent of the assets in the city and a little over 32 percent of the assets in the Greeley area. Its main competitor, Greeley National and an affiliate of ABC Holding Company, is only slightly larger. Of the total banks in the area, the two largest have about 66 percent of the total assets. The three largest banks have about 88 percent and all would be holding company banks. As of June, 1970 they would have these ratios of assets.

Q. Assuming that First National Bank of Greeley were acquired by Bancorporation of Denver?

A. (Nods affirmatively)

Q. Now, would you go through the rest of the documents as quickly but as thoroughly as you can and point out briefly the significance of those particular documents with regard to the matter you have just been testifying about?

A. Well, just about all these tables show that the First National Bank of Greeley is the second largest bank in the city [273] and the area. Just about all the tables show that the same thing—show the same thing as Plaintiff's Exhibit No. 73, the one I just discussed, except for Table 1 on commercial industrial loans, Exhibit 79.

Q. What does that show with regard to commercial and industrial loans?

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A. It shows that the First National Bancorporation is the largest bank in both Greeley and the Greeley area in that line of commerce, of the particular service activity. The First National Bank has 40 percent of the commercial and industrial loans in Greeley and nearly 39 percent in the Greeley area, and this is superior to either the share of the Affiliated Bankshares of Colorado or the United Banks of Colorado.

Q. May I interrupt you just a moment, Mr. Walsh. It's been called to my attention that you indicated and that you stated—perhaps you misspoke yourself—that the First National Bank of Denver had 40 percent of the commercial and industrial loans in the City of Greeley.

A. May I correct to First National of Greeley.

Q. You're speaking of the First National of Greeley?

A. (Nods affirmatively)

Q. And you're addressing yourself in that connection with Plaintiff's Exhibit 79?

A. Yes, sir.

Q. I interrupted you. Had you concluded your discussion [274] of the significance in your view of Government's Exhibits 73 through 86 inclusive?

A. Well, if you look at total assets or total deposits, demand deposits, savings deposits, other time deposits of individuals, total loans, commercial and industrial loans, real estate loans, single-payment loans, loans to individuals on installment basis, loans to farmers, you find in all cases but one that the First National Bank of Greeley ranks as the second largest bank in the city and that the three largest banks have a very substantial share constituting a highly concentrates market. Either taking the city itself or taking the area as whole.

Q. Now, in respect to these documents that you have just discussed and the previous documents that you have already testified about, what effect if any would the acquisition by Bancorporation of the First National Bank in Greeley have on competition?

A. Well, I conclude that it would have an anti-competitive effect on competition.

Q. In what ways?

A. Well, first, we mentioned this before and that is the elimination of substantial potential competition by the First National Bank of Denver in Greeley and in the Greeley

BOOK TOO LARGE

area. It can't help but entrench the First National Bank of Greeley and the existing concentrated structure with 84 percent [275] of the market in the hands of three largest organizations. The highly concentrated market leaders can preempt new bank locations in the suburbs. They can discourage——

MR. METZGER: May I object to this entire line of response. This is absolutely unsupported in the record from the time we started talking about entrenchment. Absolutely no record basis for saying there is any entrenchment, none at all. There has not been one word of testimony, not one document, nothing.

THE COURT: He has said in his opinion.

MR. METZGER: He has leaped from stating that this would have an anti-competitive effect to concluding with regard to something that absolutely there is no record on; none of these documents speak to the question of entrenchment. None of these documents speak to the question of preemption. None speak to the question of ability of these organizations to obtain charters from the regulatory agencies in suburban areas; none.

THE COURT: Well, it may be that part of his testimony is objectionable. And, it may be that his projections are not supported or are not reasonable. I don't know. You may attack them from that standpoint. But, I think you can do that adequately on cross-examination.

Q. (By Mr. Schoepke) Well, Dr. Walsh, what's the basis for your statement that the First National Bank of Greeley [276] will be entrenched in the Greeley market in its leading position in that market?

A. The concentration of that market and tremendous resources behind its entrance in that market. You will have the three largest banks with nearly all the market. Each one with a tremendous resource of the holding company behind it. So I think the high level of concentration becomes entrenched as well as the position of the First National Bank of Greeley it is—I think that that level of concentration is going to discourage new bank companies from being organized by independent businessmen. Certainly it removes First National Bancorporation from its position on the wings as a potential competitor. It may deter future competition by allowing First National Bank of Greeley to become a member of a new holding company.

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The possibility that First National Bancorporation of Denver might enter the Greeley market by building a new bank or buying out a smaller bank, growing up, and becoming an effective competitor in the market and thus adding to the degree of competition in that market. That kind of potential reduction and deconcentration is forever eliminated.

Q. Would the proposed acquisition in your view have any effect on any of the remaining independent banks in the market?

A. Oh, it certainly would. Facing the three or four of the largest holding companies in that market would surely [277] have a restraining effect upon competition.

* * * * *

[279] Q. Have you exhausted your recollection?

A. The acquisition triggers other banks to join holding companies in self-defense and——

THE COURT: Well, tell me this, are you testifying as to the effect of this acquisition upon the basis of what is already there? Is that right, added to what is there?

THE WITNESS: Yes, sir.

THE COURT: I mean, I am correct in interpreting your testimony?

THE WITNESS: Yes, and in addition to that there is the potential competition in commercial banking reduction by the current trend in acquisitions by leading banking organizations in Colorado of independent banks with substantial positions and markets throughout much of the state, so I would have to add this current trend effect to my other factors.

Q. What significance would that have in your opinion with regard to the Greeley acquisition standing alone?

A. Well, standing alone it had more limited effects, but in combination with the trend occurring throughout the state, it has much more substantial anti-competitive effects.

Q. Now, you said standing alone Greeley has much more limited effects. Do you mean that you do not consider the Greeley acquisition standing by itself as involving a [280] substantial reduction or elimination of competition?

MR. METZGER: Your Honor——

A. No.

BOOK TOO LARGE F

MR. METZGER: I must object to the counsel dragging his own witness on a key question of this type. It goes well beyond leading and it in an area like this counsel must be circumspect and not blatant.

MR. SCHOEPKE: He has already testified that it will have a substantial adverse effect on competition and I just wanted to clarify what I felt was a——

THE COURT: You can ask him to clarify it.

A. I do not mean to diminish the effect in Greeley by adding this effect throughout the state. I think both are important. I do not mean to say one is less or greater.

THE COURT: Well, I do not think it is responsive, anyway. Maybe I didn't hear him correctly. I think he is answering a question that you didn't ask. I think what you wanted him to testify to was the limited degree situation, as to whether or not this acquisition was substantial or insubstantial in its effect, isn't that what you asked him?

MR. SCHOEPKE: Yes.

Q. Would you address yourself to that question?

A. Well, it represents 32 percent of the total assets in the Greeley market. That is a substantial market share to acquire in a highly-concentrated market, and this would [281] have substantial anti-competitive effects as a result of that very large position they acquire without being forced to compete for it.

THE COURT: He didn't ask you whether it was of great magnitude in terms of assets. He asked you whether or not it would have substantial or insubstantial impact on competition as it now exists. Would it adversely affect it in a substantial way?

THE WITNESS: Yes.

THE COURT: Can you answer that?

THE WITNESS: Yes, it removes the Bancorporation on the edge of the market, of the Greeley market, as a disciplining effect on the kinds of competition that arise in a highly-concentrated market that Greeley is. It is bound to have a competitive influence. We have three dominant firms. You have got an even larger firm on the edge of the market that adds a fourth in terms of potential competition, a significant, in my judgment as an economist, potential competitor.

THE COURT: What you are saying is you reduce the competitors from four to three?

THE WITNESS: You reduce the—if you count the three competitors and the fourth on the edge, yes.

Q. That is in the City of Greeley, is it not?

* * * * *

[282] Now, Dr. Walsh, you referred to Bancorporation as a substantial potential competitor in the City of Greeley and the Greeley area and you have also testified on the question of its position as a significant potential competitor in the Greeley market. I would like to ask you in your view as an industrial economist is the probability of actual entry into Greeley or the Greeley area necessary in order for Bancorporation to be a potential competitor in these areas?

A. Certainly not.

Q. And I wonder if you will explain that.

A. Well, the existence of an aggressive, well-financed organization such as Bancorporation is——

* * * * *

[283] MR. METZGER: May I ask that the notes be marked for idenitfication, Your Honor? I do think these are phrases that I've heard before precisely.

THE WITNESS: That particular phrase came out of Penn-Olin.

* * * * *

[284] THE COURT: Well, I think you ought to try to testify without reading.

THE WITNESS: All right.

THE COURT: Actually, I think you would get along better anyhow if you keep your head up because when you drop your head I can't hear you and I don't think everybody else can, either. I mean, if you just speak out to everybody here I think we would all be better off because we want to hear what you have to say and your voice drops when your head drops.

THE WITNESS: Yes, sir.

* * * * *

A. (Continued) There are two kinds of efforts, two kinds of entry. One is wings effect, standing on the edge of the market. The other effect is the actual entry going into the market which has a deep, deconcentrating effect. This is a wings effect and that's a very substantial competitive element in the Greeley market.

BOOK TOO LARGE FO

Q. Now, in this determining whether or not a potential competitor in a geographic market situation such as Greeley [285] is a significant potential entrant or a potential competitor, would you use an objective test or a subjective test?

A. I think economists every chance they got would try to use an objective test rather than a subjective. Objective tests such as the resources, the interest, the relative capability to other firms in the wings, these kinds of tests can be shown objectively and people can agree on them, whereas subjective tests, the statement that anyone might make with regard to what will happen in the future, seems to me the weakest kind of test that we can apply, not just in antitrust but throughout economic research and investigation generally. We try to, as much as possible, introduce into our investigation objective tests of what's happening rather than the opinions and statements of those involved.

THE COURT: Well, what's happened up to now is objective, isn't it?

THE WITNESS: Yes, sir.

MR. METZGER: Your Honor, if I may expound on that point, which is very important and essential to this case, just for the moment, what counsel is suggesting is that the actual impact on the minds of the bankers in Greeley of the First National Bank of Denver's possibility of entering the market should be irrelevant, that what you should look at is not what they are thinking and what is actually affecting [286] their conduct, but what they ought to be thinking in the best of all possible worlds. This is the point that's being raised here now and this is the point to which we will address ourselves with those bankers.

MR. SCHOEPKE: It seems to me, Your Honor, this is argument and can be covered in cross-examination.

MR. METZGER: I wasn't addressing myself to the witness, Your Honor, at all, but to the question with the Court. I apologize if it was inappropriate.

THE COURT: That's all right, proceed.

Q. Dr. Walsh, now, you have indicated that the proposed acquisition of First National Bank of Greeley by the First National Bancorporation of Denver would of itself have substantial adverse competitive effects. Now, in connection with your analyses of these effects, would you as an industrial economist confine yourself to the Greeley acquisition alone?

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A. No, you can't look at an acquisition in a vacuum, just like you can't look at any economic event in a vacuum. You have got to look at the acquisition trend and related markets. You have got to look at who is engaging in these acquisitions throughout this area.

Q. Now, what are the additional factors which you would as an industrial economist and market structure analyst look in addition to the particular transaction under [287] immediate scrutiny?

A. Well, the statewide trend, the mergers throughout the related markets, the—would you clarify it, please?

MR. SCHOEPKE: I wonder if you would mind reading the question again?

(The reporter read the pending question aloud.)

A. (Continued) Well, I would look at the trends in mergers. I meant to say that, the trend in mergers throughout the state. I would look at who was involved in those mergers. Is it the same firms who are involved in the Greeley area in the holding company operations?

Q. And, Dr. Walsh, I would like to show you Government's Exhibits for identification Numbers 113 through 125, and ask you to look at them and ask you if you have used these in connection with your analysis, but, first, have you conducted an analysis of the statewide trend to which you have just referred?

A. Yes, I have.

Q. And have you used Plaintiff's Exhibits 113 through 123 in connection with your analysis?

MR. METZGER: Your Honor, we have reached the point of the consolidation question more directly. Counsel is becoming involved now in the question of the possible future acquisitions with which the holding company may become involved if this and they pass their separate scrutinies [288] before the Court. I suggest that this line of inquiry is inappropriate in this case, logically as well as a matter of evidence, because if this Court decides that this acquisition violates the standards of the Clayton Act the frame of reference within which the Court will consider the next acquisition will change considerably from that which is before the Court now, for this reason: In simple logic, one ought not to consider what is not and what is actually subject to a separate lawsuit of its own in this litigation.

BOOK TOO LARGE FOR F

The courts, when they have considered the subject of trends, have consistently restricted themselves to what has happened. In the Philadelphia National Bank case, the Court spoke of the trend towards concentration in Philadelphia and they said in 1963 that the number of banks in the Philadelphia metropolitan area had reduced from 108 to 40 and the market share of the largest institutions had increased from 60 to 87 percent. These numbers suggest that the Court is talking about past trends. This is what the Congress spoke about when it amended the Clayton Act.

Now, we are speaking of prospective, speculative events, which may never come to pass, and if they do will come to pass in an entirely different factual context than exists now. We are entering a field too speculative for consideration by this Court at this time.

THE COURT: Well, they have represented to me in [289] their brief and in their proposed findings that the First Bancorporation has an avowed purpose to have outlets in various areas of the state, including the Western Slope, that this is their plan and it has been——

MR. METZGER: And that plan has not——

THE COURT: —announced publicly.

MR. METZGER: We do not contest that fact and the statement in the 1969——

THE COURT: Well, I think they are entitled to show that, this statewide picture, for the purpose of showing that there is—to use the phrase "frame of reference"—to show that there is a general plan which will result in concentration of which the Greeley acquisition is simply a part. If they can succeed, why, it might help. I don't know how much probative value it will have unless they also show that the instant acquisition is going to have some impact, you know. I think it might become a relatively unimportant frame of reference if they haven't got a case in Greeley, you know, but if it does, if they have a substantial case in Greeley, I suppose it lends some credence to it if they can show this is part of a general plan.

MR. METZGER: No, Your Honor, because none of those will come to pass if they in their time frame and their frame of reference violate the law. Let us suppose that the Court gives some credence to the prospect that we might acquire the [290] bank at Sterling in this case and in some way

weighs on the Court's determination here, and in point of fact we got shot down in Sterling.

THE COURT: Well, I would say that——

MR. METZGER: Which is subject of a lawsuit.

THE COURT: True. I am sure that you are right that it is entitled only to limited consideration, but I say it ought to be considered about to the same extent you consider the fact that the United Bank has outlets and is seeking more perhaps in various parts of the state and that this other company, the name escapes me——

MR. METZGER: Colorado National Bank shares has made two acquisitions, Your Honor.

THE COURT: I mean the one in Greeley.

MR. METZGER: The ABC, Affiliated Bank Shares of Colorado.

MR. SCHOEPKE: And the United.

MR. METZGER: We started with that.

THE COURT: I expect you are entitled to consider the whole picture. I agree with you it has got a limited value and from what I have seen on both sides here it couldn't carry the day in this particular case. If it only furnished a backdrop, it would perhaps give some meaning to a little explanation of the evidence that they are presenting in the case at bar.

[291] MR. METZGER: If this Court were to say, in its opinion, "Yes, I have been influenced——"

THE COURT: Well, we haven't been trying it on that, they are bad men or they are violating the law generally or they have diabolical motives in general. That's out, you know. So, so far as it has legal relevance, we will consider it.

MR. METZGER: All right, Your Honor.

THE COURT: Does that satisfy you?

MR. METZGER: Well, ——

THE COURT: You would rather keep it out altogether and try this thing under a microscope, but we can't do it.

MR. METZGER: No, no, I have no objection to a review of what has transpired. I think that the United acquisition is in the past and ABC structure and the Colorado National Bank shares structure and what they have done is relevant to this case, but we are dealing with a potential competition case in the first instance. If we add to that the

BOOK TOO LARGE FOR FI

shadows of Christmases yet to come, we are really entering into a realm of speculation too thin to support even fog.

* * * * *

[292] Q. (By Mr. Schoepke) Now, would you Dr. Walsh tell us in connection with your examination of the acquisition trend in the state as a whole, in what way you utilized Plaintiff's Exhibits 113 through 125? First off, did you utilize them?

A. I did.

MR. SCHOEPKE: May they be admitted into evidence, Your Honor, Plaintiff's Exhibits 113 through 125 inclusive?

THE COURT: Any objection?

MR. METZGER: The Court has noted our objection.

THE COURT: Very well. We will overrule it based upon the fact this is not relevant evidence. We will receive 113 through 125.

A. This shows the growth of holding company banks and [293] subsidiaries for the——

Q. Which one are you referring to now?

A. Plaintiff's Exhibit 113. —for the period 1960 through 1970, December 31, 1970.

Q. What significance is that in your analysis?

A. Well, it shows that the number of bank subsidiaries increased from 3 in 1960—with 4.4 percent of the total Colorado deposits to 41 in 1971 with 53 percent of bank deposits in the State of Colorado.

Q. May I direct your attention to Plaintiff's Exhibits in evidence 114 through 118 which are essentially similar exhibits and ask you if you would tell us what the relationship is they have to your analysis?

A. You're asking about 114 through—would you—would you please say that again?

Q. 114, 115, 116, 117 and 118.

A. Yes, this shows the same sort of thing except for being illustrated with respect to total deposits bank holdings as was the first exhibit, 114 through 118. It shows the same thing for the total assets held by bank holding companies, total deposits held by bank holding companies, advanced demand deposits of individuals, partnerships and corporations, time and savings deposits and loans and discounts held by bank holding companies.

Q. Now, what significance do these documents have if

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[294] any in connection with your analysis of the concentration trend in Colorado banking?

A. Well, it shows that the share of Colorado banking is in the hands of holding companies with diversified operations and throughout many markets in the state has increased substantially. Exhibit No. 114 shows that the First National Bancorporation in 1970 had 13.6 percent of Colorado total assets held in banking firms. United Bank was the largest, however, with 15.5 percent of the total assets in Colorado banking. And it shows that United Bank had operations throughout Aurora, Boulder, Greeley, Littleton, Fort Collins, Lakewood, Pueblo and Mesa National Bank in Grand Junction.

Do you wish me to continue?

Q. If you have anything more to add to these documents, please go right ahead.

A. Well, it shows generally the key information or, one, that holding company banks have had an increase in the share of total banking in the state and, two, that holding company banking is—has continued to enter into more and more—continued to acquire more and more banks in banking markets throughout the state, particularly in the growth areas.

Plaintiff's Exhibit No. 115 shows the same information with regard to the share of the leading holding company banks, with regard to total deposits.

Exhibit 116 shows the same sort of information with [295] regard to holding company banks, with regard to demand deposits.

117 shows the share of banking in Colorado and holding company banking in terms of time and savings deposits.

And 118 in terms of loans and discounts held by holding company banks.

Exhibit No. 119 summarizes the share of banking in June of 1970 in the hands of the ten largest banking organizations in the state. United Bank is the largest with 14.6 percent. First National Bancorporation second with 12.6 percent. The ten largest control 57.5 percent of the banking in the state.

Q. Now, what if anything does this indicate to you in connection with the statewide trend?

A. It shows that the trend effect of large banking organizations being in growth markets throughout the state and

BOOK TOO LARGE FO

related in this way to the central market which is in Denver, the market which itself is highly concentrated. It shows that the opportunities for diversity of services is declining in the state; that it's less likely if you go to an adjoining market to find a different set of banks than you find in the market in which you live than in the past years. This trend is increasing.

Q. Now, in connection with your study of this trend, did you give any particular consideration in your analysis to the participation if any of First National Bancorporation [296] in that trend?

A. Yes, they have acquired banks in addition to Greeley——

MR. METZGER: Your Honor, may I object. The First National Bancorporation has never acquired anybody. I think counsel ought to straighten out his facts.

MR. SCHOEPKE: Well, I think the witness misspoke himself.

THE WITNESS: Has sought to acquire banks, application to acquire banks in addition to Greeley.

MR. METZGER: Then I must object to the witness testifying as to speculation.

THE COURT: Why don't you have him describe what actually occurred? I know anyway, don't I? I know what occurred anyhow, do I not? I mean, isn't this pretty well agreed to?

MR. SCHOEPKE: Yes, I think so.

MR. METZGER: What has transpired is agreed.

THE COURT: Yes. You've got these de novo situations in the outskirts, in the metropolitan area; Northglenn, Southglenn and Montbello.

MR. METZGER: Montbello—we were shot down on an application, on a new charter, across the board. We have acquired—we organized a bank in Northglenn. We organized a bank in Southglenn and another in Bear Valley.

* * * * *

[297] Q. (By Mr. Schoepke) Directing your attention, Dr. Walsh, to Plaintiff's Exhibit No. 122 in evidence, would you explain to the Court what significance that statistical table has in your opinion?

A. It shows the total assets of 25 largest banks in the State of Colorado and breaks down the ten largest banks and

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it shows that seven of those have either been acquired or are in the process of being acquired by the holding company.

THE COURT: What number is that?

THE WITNESS: No. 122.

A. And then turning to the end of the table, it shows that of the 25 largest banks in the banking organizations in the—banks in the State of Colorado, that 14 are either acquired or are in the process of being acquired by holding companies.

* * * * *

[299] Q. (By Mr. Schoepke) Well, now, to move along, Dr. Walsh, I show you Plaintiff's Exhibit for identification 129, 130 and 131 and ask if you have used those documents in connection with your analysis of the statewide significance of the holding company movement of which Greeley is a part?

A. Yes, I have.

Q. And would you explain to us very briefly the use that you made of that particular statistical data?

A. This Chart No. 129 shows the total assets of commercial banks in the City of Sterling and Logan County, 1960 to 1970. This shows—— The prominent feature of this chart is that it illustrates the Security State Bank of Sterling is the largest bank by far; nearly twice as large as the next largest bank in the area, with 52.53 percent business in the county and 54.4 percent of the banking business in the city.

MR. METZGER: May I ask the Court if we aren't getting far beyond what the Court said he was going to accept?

THE COURT: I agree. I don't think we ought to try this Sterling case, Mr. Schoepke.

MR. SCHOEPKE: Well, Your Honor, all we want to do is indicate the relative size of the banks which they are seeking to acquire which is part of their concerted program. I don't propose to go any further to putting in the statistical data on the relative size of the banks in the areas concerned [300] and the economic growth data in the area concerned.

THE COURT: He can express an opinion on this. He can refer to it in his opinion. But, I just don't feel that we ought to try in depth this Sterling situation.

MR. SCHOEPKE: Well, I'm not trying it in depth, Your

Honor. I just would like to put the plain statistical data in as to the relative size of the bank involved and the economic data in the area concerned and we believe that this is part of what is necessary in order to properly assess the statewide significance of the movement which is going on. This all goes to trend. It's the backdrop within which the Greeley acquisition itself should be judged. It's as the minority opinion in the Federal Reserve Board said, that the Greeley acquisition standing by itself is bad, but the trend in the state and concerted program of the expansion of which it is a part simply underscores that anti-competitive consequence and since this Court is called upon—will be called upon to weigh the asserted benefits of the merger, the alleged convenience and needs against the anti-competitive effect, the Court would be in no position to adequately undertake the weighing process unless it had before it the true or the extent of the substantiality of the acquisition involved, and for that purpose we would propose only to put in the data concerning the identity of the banks that are a part of this concerted program of acquisitions which was announced by the [301] bank in 1968 and the nature economically of the markets concerned.

THE COURT: Well, what you're giving me is a comparative analysis of the three banks in Sterling, is that right?

MR. SCHOEPKE: Yes, Your Honor, and simply shows that the bank—the Sterling bank, being acquired in Sterling is the largest in the area with 54 percent of the market.

THE COURT: What is this bank?

MR. METZGER: The Security State Bank is the bank involved, Your Honor.

I suggest what we have here is a legal problem. Counsel is attempting to have this Court conclude that a trend includes a prospective event. Every single case, all of the congressional dialogues dealing with the Clayton Act have dealt with what has been and the impact of what has been and what has happened. When you're talking about a statute where the language speaks of possibilities and probabilities and maybes, it's bad enough to have to deal with what was.

THE COURT: Look, I'll let him testify in general terms as to the picture in Sterling insofar as he can relate it to the instant case perhaps. But, I don't want to accept any documents on any comparative analysis of the banks in

Sterling. That is a case that has to be tried on some other occasion. And I don't think it would be appropriate to make a finding on what the situation is in Sterling. It would tend [302] to preclude a fresh approach to it in another case. Sterling is entitled to be tried on its own merits. So that's the way we will proceed. He can generally discuss it but we will deny admission to this exhibit. At least, I'm not going to read it.

We will take a short recess. It's that time.

(Whereupon, the trial recessed at 3:25 p.m.)

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[308] MR. SCHOEPKE: Yes, Your Honor, but we are not seeking to try the Sterling case. We are simply presenting [309] it as background data to be considered in conjunction with the Greeley acquisition, of which it is a part. It is a comprehensive program.

THE COURT: Well, are you going to follow this up with the Colorado Springs and——

MR. SCHOEPKE: Yes, Your Honor.

THE COURT: And Exchange National? Are we going to have to try that one, too?

MR. SCHOEPKE: And in addition to that, Your Honor, all of these are relative to the vertical case.

THE COURT: Do you have some more besides Exchange National?

MR. SCHOEPKE: Yes, Your Honor, we would move into evidence at this time Plaintiff's Exhibit for Identification No. 145, which is excerpts from First National Bank's application to the Federal Reserve Board to acquire Exchange National Bank in Colorado Springs which has been approved by the Federal Reserve Board.

• • • • •

[310] THE COURT: Well, will tell you what, if you would show me some parts of this prospectus or application that constitute admissions relevant here, I would give favorable consideration to it.

MR. SCHOEPKE: May we do that during recess tonight, Your Honor?

THE COURT: But when you are simply dumping it in my lap for whatever value it may have and leaving it to me to dig it out, I don't see it has any value.

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BOOK TOO LARGE F

[311] MR. METZGER: The Exchange situation. But, let me suggest, Your Honor, that if counsel introduces documents here to show that El Paso County is a concentrated market, we will then have to introduce the Federal Reserve Board opinion that El Paso County is not concentrated and he will have to try and counter that and we will be bouncing across El Paso County as well as Logan, Boulder and Weld.

THE COURT: Well, it's not a bright prospect. But I think you would do a little bit better to concentrate on Weld. I haven't seen too much that is impressive so far. [312] Before you start trying Sterling and Colorado Springs, I think you ought to firm up what we're trying here. It's not an impressive case so far. You may have something in the icebox that will ring the bell, but I haven't heard it yet, I will tell you frankly. I've been expectant and anticipating and so on. I did not know anything about this case. But, I figured that you must have something or you wouldn't have filed it.

MR. SCHOEPKE: We do think we have something.

THE COURT: Well, I'm not going to try it on a statewide situation; on what the condition is in Colorado Springs; I can tell you that right now.

MR. SCHOEPKE: May I ask for a ruling then on my offer of——

THE COURT: We will let you check this out this evening as you said you would on the Sterling prospectus, and if you can show me some material, admissions, for example, on First National Bancorporation that would bear on the case we're trying—— I'm quite willing to let you introduce evidence to the effect that this is a statewide plan. I just dislike having to try that matter in depth. That's all. I'm quite willing to have the facts put in, you know, that they are seeking to expand to Colorado Springs. As a matter of fact, I accept your statement and your brief and findings that they are projecting into the Western Slope as [313] well. But that this is on the drawing board. That's fine. I'm willing to let you show the general picture.

* * * * *

[322]

By MR. SCHOEPKE:

Q. Mr. Walsh, I'd like to direct your attention to Plaintiff's Exhibit 35 in evidence——

MR. SCHOEPKE: Your Honor, I believe you have a copy of that.

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Q. ——which consists of portions of defendant's answer to plaintiff's interrogatory number 4. I'd like to direct your attention to the page numbered 4 of Plaintiff's No. 35 and ask if anything on that page bears on any of the testimony that you have given here with respect to the consequences of the market structure of the type you have [323] been describing.

• • • • •

MR. METZGER: 35 has been received with a protective order. It is under seal with the Court.

• • • • •

MR. SCHOEPKE: Well, if Your Honor wants to clear the court or discuss it in chambers—I don't want to violate the confidentiality.

• • • • •

[327] THE COURT: Do you know whether there is any tendency on the part of banks to loan money to officers of other supposedly competitive banks?

THE WITNESS: I do, Your Honor. I read this——

THE COURT: How come you are acquainted with this practice. It is a practice?

THE WITNESS: I have studied this document, Your Honor.

THE COURT: You just learned it from this?

THE WITNESS: This is the——

THE COURT: Well, I don't think it is any general practice.

THE WITNESS: No, I——

MR. SCHOEPKE: May the witness explain how he has—what the significance of this document has to him as an industrial economist?

THE COURT: All right, fine, go ahead.

THE WITNESS: May I refer to the findings of the document?

THE COURT: Sir?

THE WITNESS: May I——

MR. SCHOEPKE: Yes, go ahead.

THE WITNESS: ——use the findings in the document?

THE COURT: Yes.

THE WITNESS: Well, this is a document from the [328] First National Bancorporation with regard to their interest rate policies and it shows that loans to officers of large Denver banks are at rates of one percent under prime rates.

BOOK TOO LARGE FO

MR. METZGER: That's not what the document shows, nor what it says, Your Honor, and I don't think we should be bandying this about.

THE COURT: I simply asked him to state how he knows that there is a practice that goes on whereby the banks loan to one another's officers, that's all.

THE WITNESS: And that this rate——

THE COURT: Whether there is a practice? Did you hear my question?

THE WITNESS: Yes.

THE COURT: How do you know it? Is this a general practice?

THE WITNESS: It is a practice between two Denver banks, sir.

THE COURT: Well, then, it is a single instance, as far as you know?

THE WITNESS: Yes, sir.

THE COURT: Do you have any information that it might exist on any widespread basis?

THE WITNESS: Only with regard to large Denver banks, sir. These are two of the largest banks in Denver. They are part of a concentrated Denver market.

[329] THE COURT: I will overrule your objection. I think we are straining at gnats, really, I do. What does it mean to you? Do not go into any figures at all. What is the general conclusion to be drawn?

THE WITNESS: It means that favoritism is shown by the officers of one large bank to the officers of an apparent competing large bank and this would deter competition between those banks, that these officers receive pay rates of interest that are substantially less than any other borrower from those banks.

MR. METZGER: Objection, Your Honor, that is simply not true. The document does not state anything of the sort. Many loans are made below prime. The suggestion of the witness is simply without foundation of any kind and is simply untrue as well.

THE COURT: Well, do you know that this is true?

THE WITNESS: From the material in the document itself, this is the lowest rate that's listed as an interest rate policy of the Denver bank.

THE COURT: Well, how do you know how many people get that rate of interest?

THE WITNESS: Well, we have a document, sir, that shows how many people are involved in this policy.

THE COURT: In this policy, yes, but I mean are they—I don't think it shows that they are the only ones who are [330] accorded this, and that's what you said. We will sustain the objection as to that part of his answer, that they are the only ones who are the recipients of this treatment. I don't know whether they are or not.

* * * * *

[331] THE WITNESS: This kind of favored treatment——

THE COURT: Okay.

THE WITNESS: ——in relationship between two large Denver banks——

THE COURT: All right.

THE WITNESS: ——is the kind of thing that develops when you have parallel behavior, cooperative competition.

THE COURT: It is an evil of concentration?

THE WITNESS: Yes, it is an evil of concentration. It is——

THE COURT: Okay.

THE WITNESS: It is a "You scratch my back and I scratch your back" kind of thing.

THE COURT: Okay.

THE WITNESS: A kind of cooperation.

* * * * *

[332] MR. METZGER: Your Honor, I would request that those two documents be given the same protection as previous documents relating to private affairs of customers of the bank.

* * * * *

THE COURT: Well, we will receive them, 184 and 185.

* * * * *

[333] Q. Mr. Walsh, would like to show you a document, Plaintiff's Exhibit 183 for identification, and ask you if that document in your view has any relationship to the conditions in an oligopolistic market as you have described it in your testimony?

A. This is a memorandum dated 11-7-69——

MR. METZGER: Before the witness testifies as to the document, we have no objection.

THE COURT: Very well.

A. (Continued) First National Bank of Denver, from Rodney C. Thomas.

THE COURT: It will be received.

[334]

(Plaintiff's Exhibit No. 183 for identification received in evidence.)

THE WITNESS: And it is reporting on a study of minimum balance service charge on checking accounts. Towards the bottom of the page it says that in deciding upon what kinds of checking account charges to have, "The theory behind this was to keep from undercutting the Colorado National to such a point we would start a service charge war," so this is the kind of effect you would expect, cooperative arrangements between principal officers of banks to have parallel actions in their lending and checking policies.

MR. METZGER: Your Honor, the document speaks for itself, but I should like to ask the Court to take a close look at that statement. It shows competition, not cooperative conduct. It shows competition, shows cutting under their prices and shows an intelligent consideration of the business risks involved.

MR. SCHOEPKE: And of live and let live.

MR. METZGER: As I say, the document speaks for itself, sir.

* * * * *

[338] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF,

-VS-

FIRST NATIONAL BANCORPORATION and FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

PROCEEDINGS before the HONORABLE WILLIAM E. DOYLE, Judge, presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Wednesday, May 5, 1971.

APPEARANCES:

(As heretofore noted.)

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[350] CROSS-EXAMINATION

By MR. METZGER:

Q. Dr. Walsh, yesterday you spoke of the actual competition between First National Bank of Denver and the First National Bank of Greeley and concluded that there was no substantial competition at the present time but that in your judgment the First National Bank of Denver was on the edge of the market.

A. Yes, sir.

Q. This, despite the fact that the banks are separated by some 52 miles in distance, correct?

A. Yes, sir.

Q. Now, you base that conclusion, I believe, in part upon the amount of lending activity by the First National Bank of Denver in the Greeley area and in part by your observations regarding the number of customers now served by the First National Bank of Denver in that market, is that correct?

A. Yes, sir.

Q. And with relation to the question of the customers served by the First National Bank of Denver in the Greeley area I believe that your source of data was plaintiff's Exhibit No. 38.

A. I wouldn't say—well, present merchants in which—to which the First National Bancorporation call on for business generation purposes.

[351] Q. And concluded from those calls on those present merchants that therefore the First National Bank of Denver was competing in Greeley for the customs of those people, is that correct?

A. They were soliciting business in the Greeley area, yes, sir.

Q. Now, that is the document that you reviewed, is it not, Doctor?

A. Yes, sir.

Mr. Metzger: Now, I should like to show the witness, Your Honor, a copy of the answer to Interrogatory No. 36 in its uncropped form.

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[353] Q. All right. If you were to place this page immediately prior to the page headed "Present Merchants in Greeley," Doctor, and look at the statement marked "D" would the fact that these merchants were not solicited in Greeley have affected your judgment as to the amount of actual competition in Greeley?

A. You refer to 2-D? Item 2-D?

Q. Yes.

A. With regard to Master Charges?

Q. Yes. That's the preceding page to page "Present Merchants in Greeley," and it explains that those merchants were solicited in Denver, not in Greeley; that they are statewide accounts that have offices throughout the state and that the business was obtained in Denver.

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[354] The Witness: This states in part "Our solicitation of merchants in Greeley County has been limited to merchants with a national or statewide affiliation." That seems to say "Our solicitation in Greeley."

Q. All right, Doctor. Let us assume——

A. It says, following, "That all of our Master Charge

contracts should be negotiated," apparently concluding the contract through offices in Denver.

Q. Right. Now, if, Doctor, you assumed that these people were solicited, not in Greeley, but in Denver, would it not have affected your judgment as to the degree of actual competition from the First National Bank of Denver in Greeley?

A. Well, I suppose if the loan is a sizeable one it's going to be finally determined in an office of the Bancorporation. But, the clear indication to me here is that the solicitation occurred in Weld County itself.

Q. And as to this contract—as contracts negotiated in Denver, is that correct?

A. It appears to me that the solicitation occurred in Weld County and the contracts were finally signed in Denver.

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[355] Q. Doctor, in examining Plaintiff's Exhibit No. 48 yesterday you noted that there were $7,129,000 in First National Bank of Denver loans in Weld County.

THE COURT: What's that figure again?

MR. METZGER: $7,129,000.

Q. Thirteen of those loans amounted to $6,500,000, or, $500,000 apiece were in what we call the national category, were they not?

A. Would you please clarify the national category?

Q. Well, you're familiar with Judge McMann's test in the Manufacturer's Hanover case, are you not?

A. No, sir.

[356] Q. Well, are you familiar with the concept—the economic concept that the larger borrowers may reach out across state and regional lines to seek their custom?

A. Yes, sir.

Q. And that a dividing line has been generally placed at the $100,000 account level?

A. Yes, sir.

Q. Now, how many of those 13 loans which were for the bulk of the deposits of the First National Bank of Denver in the Greeley area? How many of those were participations? How many were overlines and how many were direct loans?

[357] A. May I see the document on that?

Q. The document would not help you on that, sir. That information is not there. I'm asking you, do you know?

A. No, sir.

Q. Do you believe that a bank is in competition with another bank when it takes the overlines of that bank?

A. I think that comes under the relationship, the correspondent relationship between banks.

Q. What is an overline, Doctor?

A. Well, taking the loan over and above the loan limit of the local bank.

Q. So if the bank can loan more money you're not competing with it, is that correct?

A. You're providing a service of a correspondent bank in doing that.

Q. But are you competing with that bank?

A. You're assisting that bank——

Q. Then you're not competing with that bank?

A. ——in the correspondent——

Q. So to the extent these loans were overlines it was not a competitive activity of the First National Bank of Denver?

A. No, sir.

Q. Are you aware, Doctor, that one of those credits—one of those loans alone was on the order of the lending [358] limit of the First National Bank of Denver?

A. I would believe that, having examined the documents in this case.

Q. So that, as to these large loans for all you have been able to ascertain, the conclusion of the Federal Reserve Board in this case, which I shall now read to you as being an accurate one—"Of applicant's subsidiary banks, only its largest subsidiary draws any meaningful amount of business from Greeley or Weld County and such business which traces in the main to a few large customers with credit needs which could not be met by Greeley banks, does not appear indicative of substantial competition with bank."

A. I agree.

Q. Do you agree with that?

A. Yes, sir.

Q. Now, yesterday, Doctor, when speaking of the subject of concentration, you were asked, "Now, in market structure analysis, how do you go about measuring the degree of concentration ratios?" And you answered, "Well, it depends on the particular industry," and you went on to talk about marketing—the market being very concentrated if eight firms or less controlled 50 percent or more of the

deposits. Do you agree, then, Dr. Walsh, with the statement of the Federal Deposit Insurance Corporation in their 1960 annual report, which I quote:

[359] "However defined, the banking giants competing on a nationwide basis appear to be sufficiently numerous to maintain active competition among themselves. Banking is perhaps the only industry in which attempts to demonstrate a decline in competition invoke the size of the hundred largest units in the industry or the nation. In any other industry, say automobiles, steel or electronics, this many giants would be taken as prima facie evidence of a high degree of competition."

Do you agree with that statement?

A. No, I do not.

Q. You do not agree with the Federal Deposit Insurance Corporation on that point?

A. I do not believe that taking the one hundred largest giants of the nation as a whole in banking or any other industry is an indication of the amount of competition in a particular market.

Q. I think you indicated, Doctor, that concentration measures started with the amount of control of the eight largest members of that industry. Didn't we just establish that?

A. That's one measure that has been used.

Q. By that measure, certainly banking is not a concentrated industry as an industry, is that correct, as an industry, Doctor?

[360] A. The usage of the term "industry" in this context is misleading because banking is a series of markets.

Q. Well, Doctor, would you——

MR. SCHOEPKE: Let him answer.

Q. Would you answer the question and then make whatever explanations you choose, Doctor? But, would you——

A. I would not choose to use the term industry in this context.

Q. Then you do not believe the industry criteria was valid? I thought you were speaking as an expert in industrial classification.

A. But defining industry in a common sense term, meaning all the firms in the commercial banking in the nation—

but, competition occurs in markets. Therefore, to apply the share ratio to the total industry is misleading.

Q. Doctor, all I'm asking you at this moment is whether, as a nationwide industry, banking is concentrated. I would just like to know your answer to that question and then we will get to particular markets.

A. If nationwide banking were a single market, it is not as concentrated as a number of other markets that we deal with.

Q. How many banking firms in the United States have deposits which would give that total group 50 percent of the deposits of all commercial banking in the banks in the [361] United States?

A. I don't understand the question.

Q If you would take the X largest banks in the United States, how many would it take you to get to 100?

A. I really don't know, sir.

Q. Would you believe that the number would be on the order of——

THE COURT: Do you understand the question?

THE WITNESS: He's asking me to estimate the size of the major banks and to go as far as 50, I believe.

Q. Fifty percent.

THE WITNESS: And tell him how many banks that would be. I simply don't know, Your Honor.

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[362] Q. Doctor, did you indicate yesterday that the most important factor looked to is concentration ratios?

THE COURT: Locally?

A. Market concentration.

Q. Yes, market concentration.

It is your contention, then, that although perhaps the nation is not concentrated, but banking markets may well be? Do you believe, for example, that Colorado is a concentrated banking area?

A. Colorado is a concentrated banking area.

Q. But you do not agree that it is a market, I gather?

A. Well, for some purposes, it may be, but——

Q. Not for the purposes you have discussed yesterday?

A. Not for the purposes I discussed yesterday.

[363] Q. I think then that you are in agreement with the Supreme Court's presentation in Phillipsburg, "The locali-

zation of business typical of the banking industry is particularly pronounced where small customers are concerned." You adopt that thesis, then?

A. (Witness nodded.)

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Q. Let me rephrase that and say, Doctor, do you agree [364] that it is the small customer of banking who is pinned to a particular location and who needs protection as to concentration ratios?

A. This is the tendency.

Q. Yes, and I believe you will agree that the First National Bank of Greeley basically serves small customers.

A. Yes, sir.

Q. Now, I think we can agree, Doctor, that growth deposit data is a crude measure of market share of these small customers, is it not, particularly when we are dealing with a large wholesale institution.

A. I will not limit my consideration of a line of commerce of banking just to small customers. The question is the serving of all customers, the total operation of that bank.

Q. Well, Doctor, if we are talking about an institution, the First National Bank of Greeley, which serves small customers, we are talking about the impact of an affiliation of that bank with the First National Bank of Denver. Are you not referring to small customers?

A. Small customers should be considered, but you have to consider the total operation of the bank.

Q. Well, I think you have already agreed that we are talking about an institution which basically serves small customers.

A. Primarily, but the total picture is the important [365] picture.

Q. Doctor, I should like you to look at Defendants' Exhibit for Identification No. 35. May I, Your Honor?

THE COURT: You want him to have it?

MR. METZGER: Yes, I would, Your Honor.

THE COURT: Okay, fine.

(Exhibit handed to witness.)

Q. (Continued) Looking at the top of Defendants' Exhibit No. 35, which reflects the deposits of the five largest banking organizations in Colorado as of mid-year 1968, I think you will note that although these banking organiza-

tions control 48 percent of total deposits in the state, they only control 24 percent of the small deposits in the state, and that this limitation upon their share of the market of the small depositors is even more pronounced with relation to the First National Bancorporation, which although it then had close to 15 percent of deposits in the state it had only 5.7 percent of the total deposits of the small customers. Would you not agree from these figures, Doctor, that as far as the small customer in the state is concerned that the market shares of the largest institutions are only on the order of about half the share that they have in the larger wholesale customers, and that these indicia should be relevant to your consideration of concentration.

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[366] THE WITNESS: To make a conclusion on that point, I would first have to know what the share of the five largest banks are in Denver to the total small deposit activity in Denver. If you will provide me with that information, I will respond to the question more appropriately, I think.

Q. This data is as to the banking organizations in the state, Doctor. This represents their entire structure as it exists today. I believe that you testified yesterday with relation to——

THE COURT: I suppose you would be willing to give some look at all of these criteria. How much weight you want to give is something else.

THE WITNESS: I am not particularly impressed with [367] just looking at the small depositor, Your Honor. I don't want to give the false impression——

THE COURT: Well, that gives you some basis for proceeding then with the next question. Go ahead.

Q. Am I correct that you testified yesterday, Doctor, with relation to state market shares of the largest institutions considerably and at length?

A. Well, that in the Colorado area the share of the holding companies had increased substantially over the ten-year period, yes, sir.

Q. All right, let's talk about that, Doctor. The five largest banking institutions in the state had what share of the deposits in 1961?

A. Something like 52 percent.

Q. And what share do they have today?

A. Something like 52 percent.

Q. Would it surprise you if the figure was something under 48 percent?

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[368] Q. The figure now is lower than it was in 1961?

A. I'm not willing to accept that conclusion.

[369] Q. Let's assume that it were. Would this affect your conclusion that a concentration in the state has been growing?

A. Well, you have had rapid entry during early and middle part of that period.

MR. METZGER: Your Honor, may I ask that the witness answer the question and then speak? The record is going to be in very bad condition unless we can have a response and then a dialogue.

THE COURT: Well, he's going to say, "Not necessarily," I suppose.

THE WITNESS: And, the other—just—I just crudely looked at the acquisition activity of the three largest of those five and in a partial analysis and mergers accounted for something like seven percent of their share by 1970. Now, without the mergers the concentration of banking in this area would have declined.

Q. How many percentage points has the market share of the First National Bancorporation increased between 1961 and 1970 by reason of acquisitions?

A. Well, if you count all the acquisitions that are pending it is something like 3.7 percent.

Q. All the acquisitions that it has made, Doctor?

A. It's something like 3.7 percent of the banking activity in the State of Colorado.

[370] Q. Let's start again, Doctor. How many percentage points has the market share of the First National Bancorporation increased by reason of acquisitions it has made between 1961 and 1970?

A. Well, the acquisitions are still pending.

Q. It has made no acquisitions, is that correct?

A. This is the first one they made.

Q. Has the market share of the First National Bancorporation increased during that time span?

A. I don't believe it has.

Q. Has it decreased?

A. Slightly.

Q. Referring to local banking markets, Doctor, I believe you testified that Denver and all major banking markets in the State of Colorado are "highly concentrated," is that correct?

A. Denver and all——

Q. Major banking markets in the State of Colorado are, quote, highly concentrated, unquote?

A .Well, they're concentrated by and large.

Q. But you used the words "highly concentrated"?

A. I don't recall testifying to all major banks in the state. I haven't investigated all markets in the state.

MR. METZGER: I ask that the Clerk mark for [371] identification as Defendants' Number 65 a list of the 228 standard metropolitan statistical areas in the United States and the deposit share controlled by the five largest banks in those states as of midyear 1968.

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[373] (Whereupon, Defendants' Exhibit 65 was received in evidence.)

[374] MR. METZGER: I didn't mean to offer this, Your Honor. Simply to use it as a cross-examination document for this witness.

THE COURT: Okay, go ahead.

Q. (By Mr. Metzger) Dr. Walsh, would you tell us where the City of Denver stands on this list of concentration of the 233 standard metropolitan statistical areas in the United States?

A. It shows that Denver, Colorado, has a concentration ratio of 62.9 percent deposits held by the first largest banks in Denver and that Denver ranks 210th of the cities of the standard metropolitan areas shows in this document.

Q. Then, according to your standards, Doctor, all major market areas in the United States are highly concentrated, is that correct?

A. Well, it's very apparent from this document that competition is a scarce commodity in banking and therefore a very precious commodity.

Q. Is it correct, Doctor, in your conclusion and by your standards the entire banking industry is heavily concentrated in every major market in the United States?

A. No, I would not conclude that.

Q. You don't boggle at 210 out of 233? Where do you boggle, Doctor?

A. Well, you said "every." It's apparent that [375] concentration in banking is substantial throughout most of the metropolitan areas of the nation.

Q. Are you familiar with the terms, Doctor, of the 1966 amendment to the Bank Holding Company Act and the Bank Merger Act?

A. In general.

Q. Do you know that in the course of that Act that the Congress immunized all mergers which had taken place prior to that date?

A. Yes, I do.

Q. Is that some indication to you of Congressional dissatisfaction with this level of concentration?

A. Probably is an indication of the difficulty of asking——

Q. Doctor, if you would just——

A. ——the courts or the government of having to unscramble these matters and which would keep the courts busy for years.

MR. METZGER: Would you repeat the question and then we will try again.

THE WITNESS: In my judgment—that would be my judgment.

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[376] Q. Here's a quotation from an economic review which says "the issue is whether concentration is an adequate proxy for all the determinates of competitive behavior. If it were, the task of the economists would be much simpler but the history of industrial organization studies indicates that it is not. More importantly, the vagueness of the concept of the market in merger law leaves concentration data with little meaning."

Do you agree with that representation, Doctor?

[377] And answer the question and then you can say whatever you like?

A. No, I don't agree with that.

Q. Do you care to make any further comments on it?

A. Well, economists are in substantial disagreement about this matter.

Q. Are you aware that this is a quotation from your colleague in this case, Dr. Hall?

A. Well, I'm not surprised that Dr. Hall and I wouldn't

agree on everything. We haven't studied the same matters in every—our experience isn't the same.

Q. Doctor, you spoke ysterday in your summary of your testimony which you prepared, did you not?

A. Yes, sir.

Q. You spoke of a, quote, rapidly accelerating trend towards concentration in other markets in the state such as Colorado Springs, Boulder, and Sterling, end quote. How many banks were there in Colorado Springs in 1960, Doctor?

A. I can't give you the exact number.

Q. Do you know how many there are today?

A. Probably a slight increase?

Q. You don't know how many?

MR. METZGER: I'm referring to Defendants' Exhibit Number 2, Your Honor, which lists all banks in the State of [378] Colorado by year from 1950.

THE WITNESS: May I also see the document?

Q. Of course.

THE COURT: Sure. We will give him——

Is it in there?

MR. METZGER: It is our exhibit, Your Honor, copy of which is on your desk. Number 2.

THE COURT: Yes.

Q. Now, how many banks were there in Colorado Springs in 1960 according to this document, Doctor?

A. Seven.

Q. And how many are there today?

A. Twelve.

Q. And how many were there in the City of Boulder in 1960, Doctor? You may turn to the alphabetical listing of the City of Boulder which precedes——

A. It appears that there were five. Starting here, one, two, three——

Q. And how many are there today, Doctor?

A. Appears to be one more.

Q. And how many banks were there in Sterling in 1960, Doctor?

A. I believe three, possibly two.

Q. How many banks were there in Sterling, Doctor?

A. Two.

[379] Q. How many in Sterling today, Doctor?

A. Three.

Q. Now, can you name for me a single banking market in

the State of Colorado with fewer banks today than it had in 1960?

A. Probably not. There have been rapid entries into banking markets since 1960 in Colorado.

Q. You spoke also, Doctor, of the increase in concentration occasioned by the recent holding company movement. In what banking markets in the State of Colorado have holding company acquisitions occasioned diminished market shares for the remaining banks in those markets?

A. Well, what I was referring to is the linkage effect of the holding companies being in the major growth markets throughout the state; not to the specific concentration ratio in any specific market.

[380] Q. So that to the best of your knowledge in every market in the state there has been no impact of holding company movements into those markets as far as the shares of the banks in those markets are concernd?

A. Well, I am from Fort Collins.

Q. All right, let's talk about Fort Collins, Doctor. What is the dominant banking institution in Fort Collins?

A. The First National Bank, which is a member of the Western Bancorporation.

Q. When did it become a member of the Western Bancorporation?

A. Many years ago.

Q. Would you agree that it was 1956?

A. Yes.

Q. At that time what was the market share of the First National Bank of Fort Collins?

A. Well, generally the First National Bank of Fort Collins had increased its market share and is now really the leading bank in the city and——

Q. Doctor, you have before you a document which lists the market share in absolute dollars as of 1956 and as of today. Would you examine that document and tell me if I am correct that the market share of the First National Bank of Fort Collins is the same today as it was in 1956?

A. This doesn't show—at least, the pages I am [381] referring to—I am not generally familiar with this total document.

Q. Shows absolute figures, Doctor, which can be converted by a mathematical analysis to percentage terms. If you will accept my mathematics, it is a roughly 51 percent

market share in each year. Could note for me, Doctor, whether there have been any new banks in Fort Collins since the dominant bank in that market was taken over by the largest holding company in the world?

MR. SCHOEPKE: I object to that. I don't think the witness knows whether this is the largest holding company in the world.

MR. METZGER: All right, let me ask——

MR. SCHOEPKKE: I don't think it is relevant, either.

MR. METZGER: Your Honor, we have been told we will entrench the market share because of our enormous size.

Q. Dr. Walsh, what is the size of Western Bancorporation, if you know?

A. It is a very large multi-billion dollar company.

Q. Would you accept the figure of $11 billion in assets?

A. Possibly.

Q. Now, could you tell us, Doctor, if there have been any new banks organized in Fort Collins since 1956?

A. Well, let's see, Rocky Mountain Bank, very small. Fort Collins National Bank, very small. University National [382] Bank, very small. Very modest growth in those cases.

Q. Are these banks successful, Doctor?

A. Yes.

Q. Do these banks between themselves occupy a roughly ten percent share of the market in Fort Collins?

A. They appear to.

Q. So that they have not been intimidated from entering that marketing or becoming successful by the presence there of the largest holding company in the world, is that correct?

A. Well, I remember looking at a chart which showed that United Bank was losing out to First National Bank. One of the reasons why United Joined or sold out to United Bank Holding Company—it was the Poudre Valley Bank, where I had my checking acount—was because they felt threatened by the First National Bank.

Q. All right, which official of the Poudre Valley Bank told you that?

A. Well, this was contained in the summation application of the ABC Holding Company to——

MR. METZGER: I would move to strike such evidence as hearsay.

THE COURT: Overruled. He is entitled to answer that question. I mean when you get out in this kind of area, why, if he comes up with an answer you don't like, I am not going to strike it merely to get——

[383] MR. METZGER: I never even raised the subject of Poudre Valley Bank, Your Honor. It was dragged in by its heels.

THE WITNESS: Part of the market.

THE COURT: Well, that's not uncommon in this case, but go ahead.

Q. What is the other major affiliation of the Western Bancorporation in this state, Doctor? What other banks has it taken over?

A. Could I review the document on that?

Q. Of course, if you do not know, I believe that you will find that Defendants' Exhibit 3——

A. It is three banks.

Q. Yes, Defendants' Exhibit No. 3 lists the holding company affiliations as of year end 1970.

THE COURT: All right.

A. Well, it appears they have American National Bank in Denver with apparently deposits of $130 million, First National Bank of Fort Collins with deposits of $54 million, Continental National Bank of Englewood, deposits $36 million.

Q. Have you examined the impact of the Western Bancorporation in Englewood?

A. I have not, sir.

Q. Would you look at Englewood in Defendants' Exhibit No. 2 for identification, Doctor, and tell us whether or not in [384] your judgment the market share of the Continental National Bank has increased since the year 1956?

THE COURT: Is that the associate of Western?

MR. METZGER: Yes, sir, Your Honor, that is the Englewood associate of the Western Bancorporation, the Continental National Bank of Englewood.

A. It appears that their assets increased from 14.4 million to 36.2 million since 1956.

Q. And their market share?

A. That was a little hard to estimate accurately. The Englewood First National Bank assets increased from 20 million to 64 million in the same period.

Q. Will you accept my mathematics, Doctor, again that the market share is less than one percent, plus or minus?

A. I have no judgment on it.

Q. And has there been a new bank organized in Englewood since 1956?

A. One, yes, sir.

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[386] Q. All right, you spoke yesterday on the question of the First National Bancorporation being a potential entrant into banking in the Greeley area. You stated that the critical [387] question in your mind as to potential entrants was whether or not they are capable of entering or not by acquisition, whether or not they have the incentive to enter, and whether or not they have the ability to do so. I believe that generally summarizes your idea of what makes somebody a potential entrant.

A. The ability relative to other possible——

Q. All right, how many dollars would it take for me to open a bank in Greeley, Colorado?

O. Oh, more than you could accumulate out of your salary, but not a large amount, but something like—out of my salary, I should say, as a teacher.

THE COURT: He doesn't get a salary.

A. (Continued) But something like in the order of several hundred thousand dollars.

Q. You don't know?

A. A hundred thousand or thereabouts. It is not a great amount.

Q. Now, on the question of the relative desirability of the Greeley area, could you tell us how much faster the deposit base is growing in Greeley than in the rest of the state?

A. No, I cannot.

MR. METZGER: May I ask the witness be shown a copy of Plaintiff's Exhibit No. 90?

[388] (Exhibit was handed to witness.)

THE COURT: This is overall deposits of every kind?

MR. METZGER: Yes, Your Honor, we will bring the facts out.

THE COURT: He now has the exhibit in front of him.

MR. METZGER: This is Government's Exhibit No. 90, Your Honor, which relates to gross sales in Weld County and the City of Greeley.

Q. By observation, Doctor, year end 1970, Greeley constituted 83 percent of the retail sales of the county, is that correct?

A. What year? What year is that?

Q. Year end 1970.

MR. SCHOEPKE: Counsel, No. 90 is concerned with gross sales.

MR. METZGER: That's right.

MR. SCHOEPKE: Well, you are questioning him on retail sales.

THE COURT: Now, just talk to me, if you will.

MR. SCHOEPKE: I am sorry, Your Honor. He is asking the witness about retail sales, but the document, Exhibit 90, that he has asked the witness to be shown is concerned with gross sales.

MR. METZGER: If there is any doubt, may I correct myself to gross sales.

[389] THE COURT: I think he asked him about gross sales anyway. At least he said Exhibit 90 was the gross sales of Greeley.

MR. METZGER: Yes, sir.

Q. Well, would you accept my mathematics again, Doctor, that 365.8 million out of 444.2 million is 83 percent?

A. Yes, sir.

Q. And that this share increased from—well, the first year we can compare, in 1961, where we had 148.7 versus 95.8, I again ask you to accept my mathematics, is 61 percent.

A. Yes.

Q. Would you conclude from that that the City of Greeley as a focus of sale activity in Weld County has been growing substantially?

A. Well, yes.

Q. Now, we come, Doctor, to the question of Greeley as a boom area. Now, Doctor, you are an expert, an acknowledged expert in agricultural economics, and I should like to ask you the question of whether or not the movement from the farm as the development of better machinery has done away with the need for a considerable portion of the agricultural workers has not occasioned throughout the country to your knowledge as an expert the movement from the farm into the main cities of that community and outside of those counties? Is that a fair summary?

[390] A. This is a well known national trend.

Q. I should like to show you Defendants' Exhibit No. 5, which lists the population of all counties in the State of Colorado in 1940 and 1970.

A. Yes.

Q. And I ask you to note the population growth of the county of Weld County in that thirty-year span. If you will turn to the second page, you will see Weld County's percentage increase from 1940 to 1970. What was that percentage increase, Doctor, at the bottom of the page?

A. Forty percent.

Q. And what was the increase of the state?

A. 96.5 percent.

Q. And if you know what was the increase of the United States during that same period? It is not there, Doctor?

A. Well——

Q. I think the Court can take judicial notice of the fact that it is roughly 52 percent.

A. May I also observe on this same chart that from 1960 to 1970 the State of Colorado grew by 25.8 and Weld County nearly as fast, 23.4.

Q. Yes, but would you say a single ten-year period should be the basis of your analysis, or somewhat longer period?

A. Well, things have changed a good deal since 1940 in the front range of Colorado.

[391] Q. Let's turn to the next exhibit, Exhibit No. 6, which shows the population of all Colorado cities by size categories from 1940 to 1970, and you will find listed on the first page all cities of 50,000 or larger and all cities of 25,000 to 50,000 in the State of Colorado or communities by census designation. I ask you to observe, Doctor, that the growth of the City of Greeley in this time span has been eleventh of the thirteen largest cities by percentage.

A. This does not show percentage.

* * * * *

[392] Mr. Metzger: I asked the witness to accept my mathematics that the percentage increase of the Greeley population between 1940 and 1970 was eleventh of the thirteen.

Q. And to save you time, Doctor, that the twelfth and thirteenth were respectively Denver and Pueblo.

A. Yes, this shows that the front range is growing very rapidly, and that Greeley is sharing that growth.

Q. And is it not true that the absolute growth of No. 12 and No. 13 was significantly larger than the absolute growth of the City of Greeley during that time span?

A. Are these listed in order?

Q. Yes, those are the order of size population group, Denver and Pueblo, yes. You said yes?

THE COURT: Numbers that you are referring to now?

MR. METZGER: Absolute numbers, yes, Your Honor.

A. Of course, Denver would grow in absolute numbers.

[393] Q. Of course, but insofar as numbers are relevant to the consideration of the establishment of new banking institutions, I think you will agree with me, Doctor, that in terms of percentages, eleventh, tenth in terms of absolute figures, all thirteen of the major metropolitan areas of Colorado have had greater incentives for new bank organizations than the City of Greeley.

A. You are cutting hairs. Everyone knows that the front range is a rapidly growing area.

Q. Now, you suggested that Greeley is a peculiarly attractive area.

A. It is an attractive area.

Q. Is it more attractive than these other markets?

A. Well, the front range is a very attractive area, Greeley included.

Q. Well, then, Doctor, all major metropolitan areas in Colorado are attractive areas, is that what you are saying?

A. No, no.

Q. What would you say of these 13 are not?

A. Well, I suppose all of these particular 13 are.

Q. Are these the 13 largest communities in Colorado?

A. Well, they probably weren't in 1940. You mean today or in 1940? This chart shows the whole time period, '40, '50, '60 and '70, and it is labeled population centers.

Q. Today.

[394] A. Well, Denver is obviously No. 1. Colorado Springs is obviously No. 2. Now, if you include the metropolitan area, some of these communities would be included in Denver. The metropolitan areas of Denver are growing very rapidly, as in any major city in the West.

Q. Now, Doctor, let's just pursue that one step further. Did Weld County grow at a faster rate than Boulder County in this time period?

A. Greeley grew at a rapid rate.

Q. All right, did Greeley grow at a more rapid rate than Boulder?

A. Boulder has grown very rapidly.

Q. Which grew faster?

A. Boulder grew a little bit faster. It is a little closer to Denver, a little bit more in the Denver metropolitan area.

Q. A little bit faster or a great deal faster?

A. Boulder is a very rapidly growing community. It shows that Boulder increased in population from about 13 million in 1940 to nearly 67 million in 1970.

Q. I believe that was 13,000.

A. Thousand.

Q. All right, how many banks are there in Boulder, Doctor?

A. Four—five.

[395] Q. I believe a look at Defendants' Exhibit No. 2 would show that the number is now six. How many banks are there in Greeley, Doctor?

A. Four.

Q. Well, would you agree with me that there are six banks and four bank organizations, but six banks?

A. Yes.

Q. And are you aware, Doctor, that the regulatory agency has twice within the last year turned down new banking organization applications in the City of Boulder?

A. Generally.

Q. And are you aware of the grounds they cited for the denial of these new applications?

A. I am not.

* * * * *

[397] (By Mr. Metzger) Dr. Walsh, if we may advert once more to the growth of the City of Greeley—we will take a look at the Exhibit Number 7, which shows the resident population at the Northern Colorado College. I believe that it shows that the student population has grown some six odd thousand in the last ten years.

A. Yes, it does.

Q. Is that not, Doctor, one-half of the population growth of the City of Greeley during that time span?

A. It would be a significant aspect in the growth of the total population of Greeley, yes.

Q. Now, let me ask you this question. Are student deposits substantial with relation to their numbers?

THE COURT: You mean in general?
MR. METZGER: In general, Your Honor.

A. To say students have a lot of money, deposits in banks and that students have capacity to borrow large funds from banks—I suppose the obvious answer is that of course not.
Q. Okay. Then——
A. Very closely related to their father's support.
Q. Then, looking at the——

THE COURT: They put a lot in the bank but it [398] doesn't stay long.
THE WITNESS: Probably doesn't stay long.

Q. Looking at the full-time growth, that is, the residential growth of the City of Greeley, I think if you will again accept my mathematics that if you strip out the student growth that the growth of the City of Greeley is about 23.8 percent, almost precisely the same figure as Weld County as a whole. Does that change your view that Weld Couny is a—or that Greeley is a boom area relative to the rest of Colorado?
A. I said that Greeley is a boom area. That conclusion doesn't change at all. It's so obvious to any citizen of Colorado. It's a boom area. It's a rapidly-expanding economy.
Q. But you don't think that the fact that half of that growth is resident students——
A. Half of the economic growth of the community of Greeley is not students. There is a good deal of economic activity going on in Greeley; growth activity, that is not related to students. Well, in some there is. The construction of new facilities at the university; the salaries and the number of faculty which nearly—have nearly doubled from 1960 to 1970.
Q. Yes, I included those, Doctor, as part of the permanent resident growth. I have not attempted to separate [399] the service employees or the faculty or the maintenance employees of the college. I consider those as part of the permanent growth. Nevertheless, the permanent growth of the city is, is it not, no more than the rate of the county as a whole and less than the rate of the state as a whole, is that not correct?
A. I'm——
Q. Just answer the question, Doctor, and then you can say anything you like.
A. Yes. It's interesting to me that whereas Pueblo is

the third largest city in the state, that Greeley has larger bank activity than Pueblo. Greeley is a strong economy. It's an area with strong banking. It's a rapid-growing area. The population isn't all that significant in that regard.

Q. Doctor, is population per office significant in that regard—per banking office? Is that a significant factor in determining the attractiveness of the banking market?

A. It is used as a factor.

Q. All right, Doctor.

A. One of several factors.

Q. Do you know that this is considered to be a critically important factor by the regulatory agencies in making their assessments?

[400] A. I know they use that factor.

Q. It is one of the most important factors they use?

A. I don't know that by personal knowledge.

Q. Doctor, I show you Defendants' Exhibit for identification Number 40, which shows the population per banking office of all Colorado counties over 50,000 in population. Would you tell me, Doctor, of the counties in the state with a population of 50,000 or more, what is the one with the lowest population per banking office? Would you answer the question.

A. Here again, this requires me to divide each of these——

Mr. Metzger: May I ask the witness to be instructed to answer the question before entering upon his dialogue?

The Court: Well, he can look at the document. If he can answer it, why, okay.

Can you answer it? Do you know?

The Witness: I can't answer it without going through some calculations here.

Mr. Metzger: The calculations have been made on the document, Your Honor.

The Witness: I stand corrected, sir. I'm corrected on that.

The Court: Well, examine it. If you can answer the question——

[401] A. I can answer the question. I'm mistaken. The one with the lowest population per banking office is Weld County.

Q. Perceptibly?

A. Of counties with 50,000 or more employees.

Q. Perceptibly so, is it not, sir? Substantial, distinct difference, isn't it?

A. It is one-half of the Boulder County, which is the next county in rank.

Q. And yet Boulder County has had two bank applications turned down in the past year, is that not correct, Doctor?

A. That's my understanding.

Q. Would you turn to the next defendants' exhibit for identification, Doctor, Number 41, which shows all cities of 15,000 or larger in the State of Colorado in population per office of those cities, and of the cities of 15,000 or larger in the State of Colorado, Doctor, which is the city with the lowest population per banking office?

A. Greeley.

Q. Now, Doctor, you spoke in your testimony yesterday of the prospect that, if allowed to move into——

THE COURT: What document is he looking at?

MR. METZGER: Number 41, Defendants' Exhibit for [402] identification Number 41.

THE COURT: I'm not sure what office means.

MR. METZGER: There are six banking offices in Greeley, Your Honor. You take the population of the city——

THE COURT: You mean banks?

MR. METZGER: Yes, Your Honor.

THE COURT: All right. That's all I wanted to know. I had not seen this exhibit.

MR. METZGER: 40 and 41 were the two documents we just referred to.

THE COURT: Yes.

Q. (By Mr. Metzger) Now, Doctor, you spoke yesterday of one—that one problem of entrenchment was that, if you allowed the First National Bancorporation to enter Greeley or similar markets that one result would be preemption of sites before those sites were truly available for new banking offices, did you not? That that would be one entrenchment, effect, of allowing this acquisition?

A. Moving into new developing suburbs and shopping centers is one of the examples of entrenchment, yes.

Q. Before those shopping centers are really ready to handle a new bank? Was that not the substance of your testimony?

A. Well, being on the scene, having substantial [403] re-

sources, the capability to move quickly into new opportunities.

Q. Doctor, if I have a banking office in Greeley and I want to put an office in a shopping center, do I go out and make a lease and hire some people?

A. You make application to the authorities.

Q. To whom?

A. Well, to the Federal Reserve Board.

Q. Do I just make application to the Federal Reserve Board or do I have to make application to someone else as well?

A. Well, the banking authorities, of course.

Q. Which banking authorities, Doctor?

MR. SCHOEPKE: Well, if Your Honor please, I don't think we have ever qualified him as a banking expert. He is an industrial organization man, I believe.

MR. METZGER: The doctor testified that we would preempt sites and I would like to inquire how we can go about preempting sites given the regulatory formulations we must go through. I think this is a very legitimate area of inquiry given the testimony of this witness.

THE COURT: You said they could preempt sites. What did you mean by that, if you did?

THE WITNESS: Well, I did not mean that they would not go through the proper channels in getting authority [404] before they built a bank or otherwise established a new site.

Q. Suppose I want to——

THE COURT: You mean physical site? Is that what you're talking about?

THE WITNESS: Yes, a new bank in a suburb—you would have to get permission from the authorities to do so, of course.

Q. Let us assume I wanted to establish a new bank in this suburb. What would I have to do?

A. You would have to file an application.

Q. And prove what?

A. I'm not competent to answer all the proofs that one has to show. I have examined the applications here in this particular case and they show some of the matters that are looked at in filing that application—or show all the matters looked at in filing the application in those cases.

Q. Do you know the criteria utilized by the Comptroller of the Currency in evaluating that application?

A. Well, it looks at matters with regard to convenience and need; looks at matters with regard to the effect on competition in general. You want me to be more specific?

Q. Yes, I would like you to be much more specific, Doctor. There are statutory criteria that we must use. If you don't know what they are, just say so. I'm just [405] trying to inquire into the background of your representation that we could preempt the sites. If you do not know what the criteria utilized are, that answer would be satisfactory.

A. Well, I know in general what criteria are used in making an application to open a new bank. These are as I have just mentioned.

Q. All right, Doctor. How many names must I put on my application chart for organization?

A. I heard in the court yesterday that one competition banker was sufficient.

Q. Well, that's not true, Doctor. But, going to the next point——

A. Perhaps three.

Q. How much money would I have to, as a minimum, commit to capital of this bank with the Comptroller of the Currency?

A. It's something like forty to a hundred thousand dollars; depends on the situation.

Q. Do you know what the situation is in Greeley which has a statutory minimum?

A. Not exactly.

Q. Do you know what criteria must be satisfied to the Comptroller with regard to the suitability of the area and what is the prime consideration evaluated by the Comptroller in analyzing whether he will grant a charter?

[406] A. Well, he is concerned with, in his judgment, whether the area needs a new bank.

Q. And how does he evaluate that, Doctor?

A. Well, he looks at the situation in the market. He makes a judgment about whether he thinks a new bank should enter.

Q. How does he go about making that judgment? What does he do?

Mr. Schoepke: Your Honor, I really don't think this witness has ever represented himself as qualified on the detailed procedures by which a particular regulatory agency

goes through its process of deciding whether to issue a new charter. If counsel wishes to bring that out——

THE COURT: He can say he doesn't know, if he wishes. I think that's all it takes.

MR. SCHOEPKE: I believe he said it——

THE COURT: And, they will quit tormenting him on this subject if he would just say, "I don't know." Otherwise, he will continue. Just take your choice.

Q. Doctor, would you take your choice?

A. I don't know all the details that go into each of these documents.

MR. METZGER: Your Honor, I think a sufficient predicate has been laid to strike the testimony of this witness insofar as it relates to the question of entry into [407] any market in this state, since the witness plainly has no knowledge of what criteria are utilized; how they are evaluated or what steps are taken in order to assume to decide whether or not we would enter that market.

THE COURT: Denied. Let's get on with the next subject.

Q. Now, you spoke yesterday, Doctor, of the wings theory; that there was a disciplining effect of having the First National Bank of Denver not in the market but so disciplining those banks that—in the market that their competitive behavior was materially altered by their fear that they might, by the improper competitive conduct, induce the First National Bank of Denver to enter this market.

Is that not the substance of your wings theory testimony?

A. Yes, sir.

[408] Q. Now, Doctor, if the banks who are in this market were to tell us that they had no disciplining effect, that they have never felt any disciplining effect from the First National Bank of Denver, and that they have never considered this in their competitive judgment, what would happen if—what would happen to the attractiveness of the market to First National Bank of Denver if they had made a particular or didn't make a particular competitive judgment? Would that change your conclusion as to the disciplining effect of the First National Bank of Denver in the wings?

A. No, and I would be very surprised if that kind of testimony would appear.

Q. But if you heard it, if you heard it, it wouldn't make any difference?

A. I would suspect that if that occurred it would be bebecause of failure to use the right terminology. I think in the business community the term that's most often used from businessmen I have talked to, rather than being potential competition, when they mean that they say invasion. They say threatened invasion, and it is my observation in talking to businessmen including bankers in a specific case where we were trying to develop a management game, Your Honor, where we would bring in businessmen in local areas and try to set up on a computer a management game consistent with the kind of competition they faced in that market and when we first set it [409] up we just limited competition to the single market and we ran that for a few days and the results were that profits got higher and higher, but they said it wasn't correct, that's not the way the real world works. The way the real world works in terms of relationship between local markets is that there is a threatened —if you exceed some level of price, if you fail to provide the services in your market and if there is a substantial firm on the adjoining market or outside the market, you run the risk that that firm may invade your market in part and, for example, in dairying, if a bottling-dairying company in the game raises prices above the particular level, built into the game is an invasion effect of the firm coming in and capturing some of that market, and then it might back out at a later time.

Q. Can a bank just invade somebody else's market, charge in on its horse?

A. Well, in this particular case we established yesterday that the First National Bancorporation solicits business in the Greeley area. It has some share of the farm loans. It has some share of the other loans, too.

Q. I think we just agreed this morning, Doctor, so far as we can tell, those loans do not reflect any competition whatsoever.

A. That's your judgment, not mine.

* * * * *

[410] A. Different than direct competition. This is threatened.

Q. Let me rephrase the question for you. If I am not

aware of a threat, is it your testimony that my conduct is nevertheless influenced by that threat?

A. My testimony would be that with regard to your awareness, if you are not, you are going to get invasion at some point if you get out of line in regard to competitive practices. This is just the way the real world works.

MR. METZGER: Would the reporter repeat the question to the witness, and would you listen carefully and answer the question first?

(The reporter read the pending question aloud.)

MR. SCHOEPKE: Your Honor, I believe he answered the question. This is cross-examination.

THE COURT: Well, we will try it one more time.

Q. Would you like to have it read again?

THE COURT: Assuming he didn't know about the threat.

A. Yes. Well, they will—what will happen is that if they don't know about the threat, and this happens as we [411] use it in our training program, management decision-making, is that the market is invaded. The firm in the market loses part of its operation in that market.

Q. Doctor, I don't believe——

A. And it loses profits.

THE COURT: Well, I don't suppose they are going to be apprehensive if they don't know about it. On the other hand, if it is an organization of the magnitude of the First National Bank and they are making some effort to get into the community, I expect that any denials that they make that they are aware of it are just going to fall by the wayside. I think that's what he means. You are talking about two different subjects.

MR. METZGER: All right, Your Honor.

THE COURT: Is that true?

THE WITNESS: Yes, sir.

* * * * *

[412] Q. Doctor, you stated yesterday that based on your expert knowledge that the Greeley area is attractive for entry by commercial banking organizations which do not presently have offices there. Is that not a correct summary [413] of what you said, Doctor?

A. Well, I said that Greeley has a substantial economic activity and that this is an objective test of the interest of the First National Bancorporation to enter that market.

Q. Let me read from your prepared statement, Doctor, where you say that, "Dr. Walsh will testify that the commercial banks in Greeley have grown substantially over the last ten years, and that concentrated nature of the banking market there make these markets attractive for entry by commercial banking organizations which do not presently have offices there. This again is based on his expert knowledge." Are you contesting that this is not what you testified to?

A. Will you separate those out? There is more than one point there. I want to get that done before I——

MR. METZGER: Do you have a copy——

MR. SCHOEPKE: Not with us.

Q. Let me read it again. "Dr. Walsh will testify that the commercial banks in Greeley have grown substantially in the last ten years, and that the growth of Greeley and the concentrated nature of the banking markets there make these markets attractive for entry by commercial banking organizations which do not presently have offices there. This again is based upon his expert knowledge." Is that the substance of your testimony to that question?

A. Yes, sir. Well, I didn't testify—that's not my [414] statement, but that's what I admit.

Q. I thought it was your statement, entitled "Plaintiff's Second Supplemental Answer to Defendants' Interrogatory of Expert Witness."

THE COURT: Well, it is a paraphrase, obviously. It is a first party statement prepared by the lawyer.

MR. METZGER: The witness testified yesterday, Your Honor, that he prepared this document. I can cite the record, if you wish me to secure it.

THE COURT: He did? Did you write that document up?

THE WITNESS: Well, in general substance. I did prepare my vitae and I may have been responding to the vitae question, but that's my document, of course.

Q. This is your document?

A. Of course.

Q. This is your statement? All right, if this market is attractive for entry by commercial banking organizations which do not presently have offices there, would you tell us, Doctor, how many commercial banking organizations which

ot presently have offices there have applied for new ters in the Greeley area within the last ten years.

I'm not sure I know how many have applied.

With the Court's indulgence, I will find it for you. I here, Doctor, Defendants' Exhibit No. 25 for identifica- which lists all approvals and denials of [415] Charter ications in the State of Colorado in the period, for onal banks 1961 to date, and for state banks 1954 to

I have not had a chance to examine this document, re this time.

I understand that, Doctor, but you did testify the area tractive for entry, and I think this is applicable to that tion, how many charter applications commercial banks made in this area.

It shows West Greeley National Bank of 1963.

I believe that the West Greeley National Bank, Doctor, ou will recall, is a subsidiary of the Greeley National k, which is already in the market.

All right, this is just a two-page document?

You will find state charters following.

Yes.

Can we agree, Doctor, that there has been no com- ial banking organizations not presently having banking s in Greeley which have applied for charters therein in ast 20 years?

R. SCHOEPKE: Your Honor, I do not believe the witness inished looking at the document yet.

Here is a Greeley application, 1963.

You are talking about the West Greeley National k?

] A. All it says is Greeley, 1963, and it is listed under Action."

Well, to save time, Doctor, you are not aware of any nercial banking organization which has applied for a ter in Greeley which did not already have offices in that ket, is that correct?

I do not have any personal knowledge with regard to matter.

All right. Thank you, Doctor.

octor, is the State Bank of Greeley relevant to your ysis of whether or not this market should be attractive

to new entrants? Are you familiar with the State Bank of Greeley?

A. I have visited the State Bank of Greeley.

Q. Are you aware that that is a conversion of an industrial bank which was previously headquartered in this state?

A. Yes.

Q. Are you aware of the deposit base at the time it converted?

A. Substantially different than the usual commercial bank.

Q. Are you aware that it had a deposit at that time of about $1,400,000?

A. That sounds reasonable.

[417] Q. When was that, Doctor?

A. Oh, a few years back.

Q. Would you agree 1965?

A. Yes.

Q. What is the deposit base of that organization today, Doctor?

A. Rather modest growth.

Q. Would you agree that the deposit base is about $2 million?

A. Sounds about correct.

Q. Would you agree that that was a relevant consideration of anyone examining whether or not he might think that was an attractive market to enter?

A. You mean examining the experience from 1965 to 1970 of this bank to gauge whether you as a new banking organization might enter that market?

Q. Right.

A. Well, I suppose you will consider it.

Q. All right, Doctor, you testified yesterday with regard to at least 150 government exhibits. Were these prepared by you?

A. No, they were not.

Q. Were they prepared at your offices in Fort Collins?

A. They were not.

Q. Where were they prepared?

[418] A. Justice Department prepared them.

Q. I would like to inquire whether you believe that industrial organization standards are automatically applicable

in banking, and I would like to quote to you again from an economic writer on this subject.

"The choice of criteria for bank holding company expansion cannot be settled by simple analogy to industrial merger policy and resolved in favor of maximizing the percentage of internal to total growth."

Do you agree with this?

A. Well, I think you have to add convenience and need to your consideration. Banking merger——

Q. Suppose we are just talking about competition.

A. Well, you have to consider competition in banking mergers.

Q. But in the choice of criteria for bank holding company expansion and considering only the competitive factors, do you believe that you can just take industrial merger policy and apply it blanketly to the growth of bank holding companies?

A. What industrial merger policy are you referring to?

Q. Industrial merger policy generally that you have told us that you are an expert in.

A. The whole industrial merger policy?

Q. Yes. Can you take that policy, that general policy that you have been testifying to, and apply it——

[419] A. The policy today?

Q. ——generally to banking?

A. The policy today of the Justice Department or the policy of whom?

Q. No, the policy as advocated by economic theorists, to which you prescribe and testified yesterday.

A. Well, the survival of individual banks is very critical, because if they don't survive there is a loss of deposits and great hardship on communities. There is that aspect of bank mergers. It isn't as critical in the case of the steel industry or in the case of local grocery stores as it is in the case of banking.

Q. You agree not only you can apply these criteria to banking, but even more so, is that what you are telling me?

A. I am saying that survival of banks is more critical than in the case of other industries.

Q. Then industrial policy should be applied more severely than in other cases?

A. Severely? I don't like that term.

* * * * *

[420] Q. Let's try another, "Regulation precludes direct application of the doctrines developed for nonregulated industries. Banking provides an apt illustration. A deconcentrated market composed of small banks is not necessarily more competitive in behavior or results than a concentrated one." Do you agree with that quotation, Doctor?

* * * * *

[423] MR. METZGER: Well, I think that when you're dealing with economic witnesses that one should explore the underlying theories advanced. This witness has testified that atomistic banking is more desirable than banking—than banks of different sizes reflecting different economies of [424] scale, depending upon different kinds of customer relationships, and I want to see if he believes that is necessarily true in all instances. That that is more competitive in every place; necessarily more competitive.

THE COURT: Okay.

A. I believe that reductions in concentration are generally more competitive than increases in concentration. That is generally true.

* * * * *

[425] Q. Doctor, yesterday you testified that commercial and industrial loans were the largest area of interest in this bank, the First National of Greeley. Would you [426] care to restate your answer to that question?

A. Well, as I recall, checking one of the accounts and having made a note that these types of loans accounted for 40 percent of their gross revenue of the bank.

Q. Would you agree that, by examining your own documents, you will see that the farm loans which were reversed on your tables when you first saw them are the larger and not the commercial and industrial?

A. Is that right? Has the table been corrected in that respect?

Q. Your table recited commercial and industrial where it meant farm.

A. Is that right? I'm not aware of that.

MR. SCHOEPKE: I believe that table was corrected.

MR. METZGER: Yes, but the witness did not see the correction.

MR. SCHOEPKE: And the new corrected version was what

the witness was shown. The corrections were made before this trial started.

THE WITNESS: Yes, and I made my notes earlier, yes.

Q. Yes, Doctor. And you would say then that the farm loans are the largest share of the lending activity of this bank on the corrected record, would you not?

A. If they are 40 percent, yes, of gross income. [427] If If they're 40 percent of gross income, yes.

Q. All right, Doctor. Your testimony, Doctor, then was from your notes and not from your document itself, is that correct?

A. That particular statement is the case, yes. Most of my testimony, however, was from documents. I couldn't remember all those numbers.

MR. METZGER: Your Honor, may I consult for a moment?

THE COURT: Surely.

Would you say that the Greeley market is so attractive that a bank of the size and quality of the First National is certain to become a competitor?

THE WITNESS: No, sir, Your Honor. I don't think we deal in certainties. I think that it was shown by the objective tests that we applied that they are probably the most significant potential competitor, the largest.

THE COURT: Yes, but this assumes that they will organize an outlet if this acquisition is not successful.

A. Well, it's not necessary for them to organize any new outlet for them to be a significant potential competitor and have a wings effect on that market.

THE COURT: Well, then, regardless of whether they actually go in there or not, you're saying that—You're not saying there is a probability that they will go in?

[428] THE WITNESS: No, I'm saying the probability is that they are a potential significant competitor on the wings. They add a competitive—potential competitive element to that market.

THE COURT: And then, if the status quo is maintained, you say that the sum total effect on competition in this area would be more desirable than if they made this acquisition?

THE WITNESS: Yes, sir. Then they would remain on the edge of the market as a potential invader.

[429] THE COURT: So really that is the sum and substance and total basis for your opinion?

THE WITNESS: That's the main point, Your Honor.

THE COURT: But it looks to the future almost entirely, doesn't it?

THE WITNESS: Yes, it does.

THE COURT: There is no present basis for this assertion?

THE WITNESS: Well, the present basis is the fact that they are generating some loans. They are active as they are a potential competitor in that market.

THE COURT: As a potential competitor?

THE WITNESS: Yes, sir. Plus the objective criteria which defines them as a potential competitor.

THE COURT: Well, this seems to me to be the crucial question as far as the testimony is concerned.

Do you have anything further?

Q. (By Mr. Metzger) Just to hammer that home, Doctor, it is your view that the banks in Greeley are affected in their competitive conduct by the prospect that if they change their conduct the First National Bank of Denver might set up an affiliate there? Is that true or is it false?

A. This is a long-run thing. It's to protect the opportunities for this potential competition to occur.

Q. I don't think you heard the question, Doctor.

[430] MR. METZGER: Could you read it please, Mr. Reporter.

THE COURT: May I ask you this. If they go in there, won't—the reality of the situation is that they—your premise, your basis is that they will not compete if they are actually in there with this acquisition?

THE WITNESS: That it removes them as a potential competitor where they would exist without the acquisition.

THE COURT: In other words, it will reduce the actual—the potential competition if they are there, is that right?

THE WITNESS: Through this merger.

THE COURT: Why is that?

THE WITNESS: Because they are not any longer on the wings. They're in there as a member of the——

THE COURT: Why wouldn't there be some competition as a result of their being in there? I mean, with the other banks? And, particularly the Greeley National.

THE WITNESS: From a structural point of view, you have three dominant banks plus one on the edge. Put that one on the edge in the middle. Now you're in the market. And, you have only got three dominant banks. You have removed one structural feature of that market.

Q. (By Mr. Metzger) Doctor, are you saying that there is no one else who could enter in this market other than the First National of Denver?

[431] A. No, sir.

Q. Are you saying there is no one else who could enter that market and take a five or six or seven percent share of that market within a few years?

A. Is there something in between yes or no?

Q. Answer yes or no and then make any speeches you like, Doctor.

A. I'm not denying that that could occur.

Q. You're not denying that that could be true?

A. It's speculative, however.

Q. Have you not stated in your past writings, Doctor, that that kind of entry of a five or six percent competitor is significant enough to destroy the entry barrier problem?

A. I would never testify that on a five or six percent share of the Greeley banking market, would be a very significant competitor.

Q. You didn't say a very significant competitor, Doctor.

A. Would be a significant competitor.

Q. Doctor, I asked you whether or not you have previously written on the subject of entry barriers and stated that if an organization could come in and take five or six percent or more share, that that destroyed the problem of entry barriers. Have you written to that effect or not, yes or no?

[432] A. I don't recall.

* * * * *

[435] REDIRECT EXAMINATION

By MR. SCHOEPKE:

Q. Dr. Walsh, this morning in your cross-examination by Mr. Metzger, you indicated in discussing concentrated markets that you did not consider the State of Colorado as a banking market in the same sense as you had been talking about yesterday. Do you recall that?

A. Yes, sir.

Q. Now, do you mean by that that you are not concerned in your analysis with banking concentration in Colorado, with statewide banking concentration in Colorado, the State of Colorado as a whole?

A. No, I——

Q. Would you explain, please?

A. As I testified yesterday, one of the effects of the kind of merger as in Greeley is to link the major growth markets, link the major firms in those growth markets with the major firms in the Denver market, which is itself a concentrated, highly concentrated market, and that this has the effect of extending the influence of the Denver oligopoly throughout the state, throughout the areas of growth markets in the state, and that this trend extends [436] the potential to use this kind of market power as excess itself in the Denver market throughout those markets.

Parallel actions, as we discussed yesterday, limit the alternatives of buyers of banking services throughout the state to just those few firms that permeate each market as coming out of the Denver central market.

Q. Now, in his cross-examination this morning, Dr. Walsh, Mr. Metzger discussed with you the number of banks in Colorado Springs as compared with the number of banks elsewhere in the state in 1960 as compared with 1970, do you recall that?

A. Yes, sir.

Q. Dr. Walsh, I show you Plaintiff's Exhibits for identification 146, 147 and 148, and ask you if you recognize them?

A. Yes, I do.

[437] Q. Did you utilize them in connection with your analysis of the competitive—in your competitive analysis with respect to the State of Colorado?

A. Yes, I did.

Mr. Schoepke: At this time, Your Honor, I would renew my offer to admit these in evidence.

The Court: Okay. Do you have any real objection to it in view of his expression as to the purpose?

Mr. Metzger: For the record, yes, Your Honor, but in answer to your question directly, no.

The Court: Very well. That's fine.

(Whereupon, Plaintiff's Exhibits 146, 147 and 148 were received in evidence.)

Q. (By Mr. Schoepke) Mr. Walsh, I believe that this morning Mr. Metzger also discussed with you this banking situation in the City of Boulder, the number of banks in

BOOK TOO LARGE FOR

1960 as compared with the number of banks in 1970. Do you recall that?

A. Yes, I do.

• • • • •

[439] Q. Dr. Walsh, I now show you—Well, first, Dr. Walsh, you recall that this morning Mr. Metzger also asked —[440] discussed with you the banking situation in the City of Sterling.

• • • • •

Q. (By Mr. Schoepke) Dr. Walsh, in connection with Plaintiff's Exhibits 146, 147 and 148, would you state whether [441] or not in your opinion as an industrial organization and market share economist you consider banking in Colorado Springs to be concentrated?

A. I do.

Q. And for what reason?

A. Because the document shows out of the total assets of commercial banks in the City of Colorado Springs and El Paso County $305 million. That the First National Bank of Colorado Springs has 31 percent of the market of the county. The Exchange National Bank has 17.8 percent of the county. Colorado Springs National Bank has 13.2 percent of the county, and the next largest bank, Central Colorado Bank has 8.3 percent. This is well above the 50 percent standard accepted widely in the field of industrial organization of the eight largest banks. Here we have four with substantially more than the market share of 50 percent.

Q. Now, directing your attention to Plaintiff's Exhibit in Evidence No. 165, 166 and 167, I would like to ask you whether in your opinion as an industrial organization economist the banking structure in Boulder is concentrated.

A. Yes, it is, for the same reason. For example, Plaintiff's Exhibit 165 shows for total assets commercial banks in the City of Boulder and Boulder County in 1970, that the First National Bank in Boulder had 34 percent of the city, 31—32 percent of the county. The National State [442] Bank had 23 percent of the city and nearly 17 percent of the county. Boulder National Bank had 8.5 percent of the city and 6.1 percent of the county. United Bank of Boulder had 17.1 percent of the city, 12.3 percent of the county. Here again that is a concentrated market.

[443] Q. Now, Dr. Walsh, directing your attention to plaintiff's exhibits in evidence, Numbers 129, 130 and 131,

which deal with the City of Sterling and Logan County, I wonder if you would tell us whether in your opinion as an industrial organization economist, whether or not banking in Logan County is concentrated?

A. Plaintiff's Exhibit Number 129 shows for total assets of commercial banks in the City of Sterling, Logan County, that Security State Bank, Sterling, had 54 percent of the bank assets in the city, 52 percent in the county, total assets of 46.4 million dollars.

MR. METZGER: Your Honor, may I interrupt at this point and object to this line of inquiry on the grounds that it is coming to the point with the characterizations of this witness that the defendants are, if the Court allows this line of answers to stand, going to have to make a substantial response on the terms of the merits involved as to each of these situations. I do not think that helps anybody here.

THE COURT: Well, so far as he is just having him testify as to the percentage——

MR. METZGER: No, he is characterizing it. He says that these are concentrated markets, that this has certain meanings. Now, there are other people—like the Federal Reserve Board which have assigned different meanings to these [444] The Comptroller of the Currency has assigned different meanings to the characterization of the Boulder market, for example, as being concentrated. In order to analyze the level of concentration we would have to get to the quality of the banking services performed by National State, which is in the minds of the regulatory agency an endangered institution. This raises questions also about what are the markets involved in these things? If these things go in the record with these characterizations, counsel can pick them out like little cherries and stick them on the wall. Unless I have my cherries, too, his appellate papers are going to look much more valid than they are, if this line of inquiry is permitted.

I respectfully urge the Court not to permit us to develop any statistics, any concentration ratios, any conclusions with regard to these other markets which are still speculative situations.

THE COURT: I will permit him to testify as to why in general he regards Logan County as a concentrated area over your objection, but I don't think we ought to get into any more details than that.

MR. SCHOEPKE: We do not anticipate that, Your Honor.

THE COURT: All right, let's get it over with.

A. (Continued) There are only four banks in the [445] county. The Security State Bank in Sterling has 52 percent, a very substantial position in that market. The next highest market share is Commercial Savings Bank of Sterling with 27 percent of the total assets, which makes the Security State Bank in the order of twice the next largest competitor in that market.

Q. Dr. Walsh, this morning in his cross-examination Mr. Metzger discussed with you and showed you some exhibits, one of which was Exhibit for Identification Number 41, which portrayed population per banking office. I wonder if you would tell us what significance, if any, in your view of industrial organizations, population per banking office has?

* * * * *

[447] A. Well, this population per bank is indeed used by the Comptroller of the Currency. It is indeed one of important measures of bank density that's used and I just would now like to state somewhat of a qualification as to this particular chart. For example, Northglenn, Aurora, many of these towns are bedroom communities of Denver and the people that live in these towns are conducting—perhaps working in Denver in many cases, conducting some of their banking in Denver, and if you could include the banking that they do outside of these suburbs in the city proper, why, it may have some effect on these figures. I do not think it would in the case of Fort Collins, but it would in the case of many of these, such as Englewood, which are bedroom communities, service communities to the City of Denver proper, and, for example, Lakewood has 30,000, nearly 31,000 people per bank compared with Fort Collins having merely ten or eleven thousand. I think probably that, if you could somehow or other adjust for the effect of the banking done by this population in Lakewood in Denver, why, it would change this relationship.

[448] Q. Dr. Walsh, this morning in Mr. Metzger's questioning you discussed with him the subject of your conclusion concerning the importance to the First National Bank of Greeley on commercial loan business. I wonder—I would like to show you Plaintiff's Exhibit Number 63 in evidence to refresh your recollection and ask if your conclusions

with respect to the matter of the importance of commercial loan business by the First National Bank of Greeley has any bearing on your original conclusion as to its importance?

A. Yes, this chart shows for—Exhibit 63 shows that the First National Bank of Greeley, the income to the bank by accounts, the largest source of income, the interest received on commercial loans in 1969 accounted for 59 percent of the total income of the Greeley bank of nearly $3 million.

MR. METZGER: Your Honor, in the interest of clarifying the record, that interest on commercial loans is interest on all loans to business and farmers. This is a category including the farm-lending activities of the bank.

MR. SCHOEPKE: Your Honor, in the interest of clarifying, this was an interrogatory answer that was submitted to us, so this was the table we made up for it.

THE COURT: I don't know why a farm loan wouldn't be regarded as a business loan, anyhow.

[449] MR. SCHOEPKE: They have it listed under it, so we can only accept what they give us in their answers, Your Honor.

Q. Now, Dr. Walsh, Mr. Metzger also asked you this morning on the subject of wings effect. He asked you whether if evidence were produced that firms in the market did not take into account the effect of an organization such as Bancorporation on the edge of the market, whether that would influence your opinion as to the potential competition. Now, I wondered—I would like to ask you, in your analysis and conclusion in matters of market extension situations, where you take into account as you have testified the issue of potential competition, whether in determining whether or not potential competition in the sense of significant potential entry is present, whether you relied primarily on objective evidence or subjective evidence?

A. Well, the starting point in the field of industrial org is concentration of that market, and if that concentration is increasing, this may have anti-competitive effects in that market, because firms have increasing power to engage in anti-competitive effects. Now, whether they do or not is subject to investigation, but there is a clear indication in the field of economics and in the field of competition, industrial organization, that market structure determines, basically determines the kind of competitive behavior that

[450] you have throughout American industry, and this is the basic underlying concept supporting a capitalistic economy. Now——

THE COURT: I don't think it is responsive at all.

Q. I think perhaps you——

THE COURT: It doesn't sound to me like it responds to the question. You were asking him about fringe and he is talking about the structure of the market after they get in there.

MR. SCHOEPKE: Yes, I agree with you, Your Honor.

Q. Dr. Walsh, perhaps you misunderstood me. I was speaking of the firms that are in the market. Mr. Metzger had discussed with you the assumption that firms in the market would testify that they did not take into account the potential competitor on the edge of the market in connection with their day-to-day competitive activities in the market.

MR. METZGER: Objection, Your Honor. If the testimony of this witness is going to be predicated upon what I said, what I said is that the banks in the market would testify that the First National Bancorporation had not been a factor in their competitive decisions in the market.

THE COURT: Its presence in the wings didn't cause them to—they didn't know they were there, that's what you [451] said.

MR. METZGER: Precisely, Your Honor.

A. Well, what we would look at as economists is the potential to have that effect, the power, the ability, the fact that they are in the wings, the fact that they are the largest potential competitor to that market. This is power rather than the effect——

THE COURT: Well, why would you rather have them in the wings than in the market competing? Why are they more effective as a threat than as an actor?

THE WITNESS: Because it will just reinforce the high concentration in that market where they do enter it as through the merger. They carry forth the kinds of parallel action that we find in Denver into the Greeley market.

THE COURT: Okay, go ahead. I won't press it at the moment, but I still have some questions I am going to ask.

Q. Now, Dr. Walsh, in appraising the competitive effects of a proposed merger, is it necessary in your opinion as an industrial organization economist to predict with certainty that actual anti-competitive behavior will occur as a result

of the particular merger, such as the acquisition such as the one up in Greeley should occur?

A. No, it is not.

[452] Q. And I wondered why. Would you explain that?

A. Markets with high concentration provide—concentration of those markets provides the power to the dominant firms to behave in whatever way they wish. If they choose to behave competitively, they have that power. If they choose to behave in a parallel fashion, have cooperative action, they have that power. High concentration gives firms high market power. It isn't necessary to demonstrate that they actually use that power in an anti-competitive way.

THE COURT: You think it would be wholesome if they organized a new bank up there, the First Bancorporation?

THE WITNESS: Yes, sir, because then they would add another element to the three dominant and one small bank in the Greeley market.

THE COURT: Well, then, it would be a question—it wouldn't mean that you didn't have the same economic powers that you would have if they went in here?

THE WITNESS: As they——

THE COURT: Which means you would have another element present?

THE WITNESS: As they competed for market share, it would have, I would think, some salutary competitive effects on the other banks, sir.

[453] MR. SCHOEPKE: Are you finished, Your Honor?

THE COURT: No. I'll let you finish, though, first.

MR. SCHOEPKE: I have no further questions unless Your Honor——

THE COURT: Well, do you expect the First National of Greeley to get a larger share of the market if this merger does go through?

THE WITNESS: Yes, sir.

THE COURT: Where will they get it?

THE WITNESS: The market is growing very rapidly and as the market grows I expect they will capture a disproportionately large share of that market because of their tremendous resources from the Denver area.

THE COURT: You don't think they will take anything away from the other——

THE WITNESS: I doubt it. From the other two large holding companies. But, we cannot predict that with certainty.

BOOK TOO LARGE FOR

They have the power to either capture an increasing market share or to follow parallel action and behave as oligopolies, cooperative competition; dividing up the market. Now, which they do is uncertain.

THE COURT: Well, do they divide it up now in Greeley? Is that what you're telling me?

THE WITNESS: I'm not certain of that, Your Honor.

THE COURT: You don't know. You say they're carrying [454] out parallel practices in Denver. What do you mean by that? Because they loan money to each other's officers?

THE WITNESS: And because they——

THE COURT: I mean, is that the basis?

THE WITNESS: Yes, sir, that is, with the additional evidence that they—that we took into account the effect on the bank which they exchanged loans at favorable rates in deciding what their checking account charges should be.

THE COURT: There is not going to be any difference in the rate of interest from one bank to another anyway, is there? There is a prime rate and it goes up from there ordinarily, doesn't it?

THE WITNESS: Yes, it does.

THE COURT: And that's true of all banks.

THE WITNESS: Yes.

THE COURT: So where is the competition going to be, anyway? In the services or quality of services?

THE WITNESS: I'm informed that banks compete on a quarter of a point interest rate changes. They do compete on interest. They do compete on services. But when bank markets become concentrated they have the power to decide how to compete, to what extent to compete and that that power—that it is that power that the Clayton Act is designed to block. It's a little like applying herbicide to pre-emergent crabgrass. You're not sure crabgrass is going to take over your lawn this summer, [455] but you better apply the herbicide anyway to block the possibility of that occurring.

THE COURT: Well, would you regard this as a mere possibility, that they will behave in this fashion?

THE WITNESS: The structure of the market is such that they have the power to behave either anticompetitively or competitively.

THE COURT: That's the real crucial question, as to whether you think it's a possibility, and if you think it's a probability, why, that's what I asked you this morning.

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THE WITNESS: Well, studies by economists——

THE COURT: First of all, tell me what level it is. Is it a possibility or probability, that this kind of behavior will follow in this situation here.

THE WITNESS: Studies throughout the economy show that when concentration increases and reaches above some certain levels it is fairly highly concentrated, that monopoly profits are higher than in markets where concentration is much lower and profit levels approach competitive levels. I could not predict the effect this particular merger will have on profit raise in that market or on services or prices, but the expectation is based on structural tests which infers behavior from the structure of that market, the expectation that they would get together and achieve anticompetitive goals.

THE COURT: You say that is a probability or a [456] possibility that they will?

THE WITNESS: I should say a probability.

THE COURT: Then really you're not speaking in terms of conditions as they actually exist in the Greeley market. You're talking about historical trends and general experience.

THE WITNESS: Talking about structure of that market, the relationship between structure and behavior of—expected behavior of firms in that market. And you increase the concentration——

THE COURT: Yes, but it's based upon history and experience?

THE WITNESS: Right. It's based on the basic tenets of a capitalistic economy which says that competition shall determine the outcome of the competitive relationship between firms; not the power of the concentrated oligopoly to determine the outcome for themselves.

THE COURT: And so you say that if they stay in the wings that there will be more competition than there would be if they actually got in the game, so to speak?

THE WITNESS: They provide over the longrun the potential of significant competition—potential competition in that role. They threaten invasion. If the Greeley market gets out of line they move in and provide better service or provide lower interest rates. This again—there is no proof they will actually do this but they provide—the structural [457] elements of being a significant potential competitor

provides the opportunities, provides potential for that kind of competition to occur. It's a structural feature, Your Honor, rather than a behavior.

And this was an idea that had its origin back in about 1952 in the early Eisenhower years when the argument was made by the business community that we didn't have to worry about the concentration level in particular markets because there were on the wings of every concentrated market in the country potential competitors which tended to discipline that market. That is the basic origin concept out of the business community.

THE COURT: Really then what you're talking about is—what you are emphasizing is a condition of structure that is less conducive to a monopoly?

THE WITNESS: Yes, sir. That's the whole key.

THE COURT: That's all there is to it?

THE WITNESS: That's it.

THE COURT: Either it is going to stand or fall on that proposition?

THE WITNESS: Yes, sir.

RECROSS-EXAMINATION

By MR. METZGER:

Q. Dr. Walsh, it is your proposition that if we were allowed to go into that market, that there is a probability [458] that we would collude with our competitors in this market to the detriment of competition therein? Is that just what you said?

A. No, sir. I have not alleged that. I have no proof.

Q. I didn't say you said it was going to happen. That that was the probability upon which you based your conclusion, that this would substantially lessen competition in the market, is it not?

A. No, there are ways to achieve monopoly profits besides collusion. There is price leadership, conscious parallelism, cooperative competition. I would never go so far as to allege collusive behavior.

Q. Well, let's say it wouldn't rise to the level of violating any specific paragraph of Section 1 of the Sherman Act, but let's say it is your conclusion that we would probably act in a noncompetitive fashion with the people already in the market if we went in, is that correct?

A. Well——

Q. Just answer the question and then say whatever you like, sir.

A. I'll probably forget.

THE COURT: He says that they probably wouldn't sit down at a dinner and get into a conspiracy. But he is asking the question—but, directly or indirectly, expressly or impliedly, this anticompetitive behavior would probably follow. [459] Is that your testimony?

THE WITNESS: Yes, sir.

Q. Well, if that is so, Dr. Walsh, why should anyone be worried about us in the wings? I should think they would be looking for the occasion to get us in, wouldn't you?

A. The Greeley banks would favor your entry.

Q. By all means.

A. Yes. Well, I'm sure that one Greeley bank favors your entry.

Q. Wouldn't you say they would all favor our entry, Doctor, according to your thesis? Either we would probably act in a noncompetitive fashion in that market and therefore decrease the level of competitive activity, and if that were true all of the Greeley banks would be looking forward to our entry. I ask you if that—in that context, would our standing in the wings act as a deterrent to the competitive conduct of the banks in the market? I suggest, sir, you have a dichotomy and I would like to have it explained.

A. You have a combination of about three or four questions there. Would you separate them out for me, please. First, "would" or "do you" and "the Greeley bank favor your entry by acquisition into that market"? Is that a question?

THE COURT: Yes. If you are going to decrease the competition and be friendly with them, directly and indirectly, why wouldn't they all welcome you with open arms? Which is what [460] he asked.

THE WITNESS: I suppose under certain circumstances they might.

Q. (By Mr. Metzger) Well, then, under those circumstances we would not be serving any valid purpose by remaining in the wings, would we, Doctor, since we would certainly not be adversely affecting their competitive conduct?

A. Why does that follow?

Q. I asked you the question, Doctor.

A. I don't think it follows.

Q. Let me ask you a different question. Suppose—suppose that the quality of competition in Greeley were to be materially enhanced by the membership of the First National Bank of Greeley in the Bancorporation. Accept that supposition. Would that change your view as to the competitive effect of this affiliation?

A. I just commented to the judge that——

Q. Would you answer the question and make whatever——

A. I just answered the question to the judge.

THE COURT: Well, answer it again.

A. Yes.

Restate the question.

MR. METZGER: Would you read the question, please.

(Question read by the reporter.)

MR. SCHOEPKE: Your Honor, I must object to these [461] questions as getting very complicated. I think that Mr. Metzger is failing to call to the witness's attention the distinction between Bancorporation's entering into—entering by merger or the possibility of their entering de novo and creating another competitive unit in the Greeley market.

THE COURT: Overruled. Go on. Let's get the answer.

THE WITNESS: Again, we're industrial organization analysts. We are applying structural tests. Implications as to behavior are applied by that test. And, by First National Bancorporation removing itself as a competitor on the wings—potential competitor—this reduces competition; reduces structural tests of competition in that market. The expectation would be that it would have a bad effect, an anticompetitive behavior in that market.

Q. Then I assume, Doctor, you're not going to let the facts interfere with your theory?

MR. SCHOEPKE: I object to that question, Your Honor.

MR. METZGER: Your Honor, I gave the doctor a supposition and I did not get any response on the basis of that supposition.

THE WITNESS: I'd be glad to respond to it more fully.

Q. Would you answer?

THE COURT: He asked whether if you were assured that the quality of the competition would be improved by the

actual [462] entry of this bank there, would you still be against it.

THE WITNESS: No.

MR. METZGER: Thank you, Your Honor.

THE WITNESS: The actual entry as a new competitor in the market?

THE COURT: Oh, no. That isn't the point. Let us suppose that this acquisition went through, but you were certain that it would increase the competition. Would you still be opposed to it?

THE WITNESS: But, Your Honor, there is no certainty as to that. They have the power to do one or the other.

THE COURT: Can't you assume it?

THE WITNESS: Assume a certainty, yes.

THE COURT: Okay. Well, that's all he asked you to do. He wants to find out whether you are opposed to it because of concentration or because of diminishing competition. In other words, is this a ritualistic opposition because the books say that concentration will usually diminish competition? Is that your whole thesis? He's asking you that.

THE WITNESS: This is the basis.

THE COURT: And I'm interested in this answer, too.

THE WITNESS: This is a basic thesis, sir, of the basic underlying thesis of a private enterprise economy. It's sanctioned by congress, sanctioned by the Supreme Court. It's a part of our culture, a basic thesis. Not only of [463] economics but throughout our economy, throughout our society, throughout our government.

THE COURT: Which is? That the concentration——

THE WITNESS: That the concentration is related to power; that power has expectations as to anticompetitive results.

THE COURT: I haven't anything further.

Q. (By Mr. Metzger) Doctor, you spoke before to the fact that the Colorado Springs area was concentrated. Have you read the Federal Reserve Board's approval of the Colorado Springs application of the First National Bancorporation?

A. Only in part, sir.

Q. Have you read the majority and concurring opinion?

A. Only in part.

Q. You are not aware of what consideration they gave to this question in detail, are you?

A. Not the majority, no, sir.

Q. Now, as to the Boulder situation, Doctor, are you aware of the circumstances surrounding the proposed acquisition of the National State Bank of Boulder?

A. I'm not aware fully of the circumstances surrounding that acquisition.

Q. Let us assume, Doctor, that the National State Bank of Boulder had very serious competitive and banking problems.

[464] A. A failing company?

Q. And, that there was—if not a failing company, some serious question as to continued ability. Would that have affected your judgment as to whether or not this is a competitively desirable event.

* * * * *

[465] Q. That would affect your judgment, would it not, Doctor?

A. If it were a failing company it certainly would.

Q. Or in any banking—anything vaguely approaching that standard? Isn't that correct? Since in banking—the viability of the institution is more important than in most industries?

A. It would depend on how serious it were. If it were quite serious—if their failure was imminent——

Q. But, Doctor, let us——

MR. SCHOEPKE: Let him answer.

THE WITNESS: I'd be quite concerned about that in that case.

Q. Let's say, Doctor, one of the regulatory agencies used the phrase endangered bank. Would that be in your view a serious consideration?

A. Well, I'll have to have you define that phrase. Does he mean that their profit levels have fallen from ten percent to six percent? Or does he mean they're just breaking even?

Q. They didn't say any of those things. Doctor, they said that in their judgment where there was——

MR. SCHOEPKE: Objection. Counsel is testifying.

[466] THE COURT: Overruled.

Q. —because it is an endangered bank and would you feel that would be something to take into consideration?

A. I would certainly want to investigate the circumstances

of this being an endangered bank and then make a judgment from that investigation.

Q. Well, do you think that that conclusion was reached as a result of an investigation?

A. Yes, indeed.

Q. Do you think that that is the statutory responsibility of the agencies?

A. Yes, indeed.

Q. Now, sir, let me ask you another question. Suppose that a man is the owner of Bank A and the executive vice president of Bank B. Would in your judgment the affiliation of these two institutions substantially lessen competition between them?

A. That is a tying arrangement, indeed.

Q. So that this would enter into the quality of your judgment as to whether or not, that is, that it would substantially lessen competition, that factor?

A. I think the interlocking of ownerships between corporations including banks is a very important aspect of the competition in our economy.

Q. And you would judge, would you not, Doctor, that [467] the question of the impact upon competition would certainly be affected by this factor?

A. Well, it would depend upon how substantial that ownership interlock was.

Q. Ownership?

A. How complete—sufficiently complete. Presumably then it would be one corporation, if it's complete. Well its equivalent.

Q. I'm suggesting in one instance, its his ownership and in the other it's senior management.

A. Well, if the board of directors control the senior management, that would affect whether the two banks could act as one or not.

Q. So that in measuring the impact upon competition you would have to take this into consideration?

A. Yes, sir.

Q. And that is a quality question that would influence your judgment as to whether or not this was an anticompetitive event?

A. Yes, I think so.

Q. Now, Dr. Walsh, referring to Defendants' Proposed Exhibit No. 41, which you discussed on your redirect exami-

nation—you suggested that because some of the cities involved were bedroom communities of Denver as you referred to them, that this might change the numbers, is that correct?

[468] A. This would affect my interpretation of the meaning of this table, yes, sir.

Q. Well, suppose, Doctor, you were to take the suburb of Denver which has the lowest population per office level. All right?

A. Here? What?

Q. Any one of the suburbs of Denver which has the lowest population per office level.

A. Littleton, Southeast.

Q. And what's that?

A. 7,633 persons per bank.

Q. Now, Doctor, just as a matter of simple arithmetic if you took a group of numbers which had certain proportions to them, that average proportion of all of those numbers couldn't be lower than the lowest proportion, could it?

A. Would you explain that, please?

[469] Q. All right. Suppose I had three numbers, the ratio of offices, banking offices to population in Denver as 20,000; the ratio in Littleton as 10,000; the ratio in Sherrillwood as 18,000, your recalculated proportion could never be lower than 10,000, is that not right, and closer to the middle of those figures?

A. Yes, sir.

Q. So, if you come up and took the bedroom communities of Denver and averaged them all together, you would still come up with a number considerably higher than that for Greeley, would you not?

A. Yes, sir.

MR. METZGER: Thank you. No further questions.

THE COURT: Do you have anything further?

MR. SCHOEPKE: Nothing further, Your Honor.

THE COURT: You may be excused, Doctor.

THE WITNESS: Thank you, Your Honor.

MR. BRENAN: Plaintiff calls Mr. James Small.

THE COURT: Mr. Small.

JAMES M. SMALL,

called as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: Be seated. Give us your name, address and occupation, please.

THE WITNESS: Yes, my name is James M. Small. My [470] address is 3191 South Holly Place, Denver, and my occupation is a city planning consultant.

DIRECT EXAMINATION

By MR. BRENAN:

Q. What firm are you associated with, Mr. Small?

A. I am President of Small, Cooley & Associates.

Q. Mr. Small, I show you at this time Plaintiff's Exhibit for Identification Number 44——

* * * * *

[472] Q. Mr. Small, is this an accurate copy of the report that you prepared?

A. It appears to be, yes.

Q. Could you state, Mr. Small, whether in preparing this report you considered——

MR. WILLIAMSON: Excuse me, Your Honor, I would interject for one purpose. The counsel keeps referring to "report." It is not a report within the concept of management consulting, simply a memorandum.

THE COURT: Well, whatever it is.

Q. In preparing this document——

THE COURT: You know what he is referring to, don't you?

THE WITNESS: I am not sure I do, Your Honor.

[473] THE COURT: Well, explain then.

THE WITNESS: I know what this is.

THE COURT: Oh, I see.

THE WITNESS: I am not sure whether I should refer to it as a report or a document.

THE COURT: What do you regard it as? Report?

THE WITNESS: As a report to the bank in Greeley.

THE COURT: Oh, it is a report of an investigation that you made?

THE WITNESS: Yes, sir.

THE COURT: Or study that you made?

THE WITNESS: Yes.

THE COURT: It lays out your conclusions?

THE WITNESS: Yes, sir.

THE COURT: Well, I guess we could call it a report then.

Q. Mr. Small, in conducting the study for this report, did you consider population?

A. Yes.

Q. And what were your conclusions as to the population of Greeley?

A. I made an estimate in 1969—may I refer to the report?

Q. To refresh your recollection, yes, sir.

A. As to what the population was, yes, that the [474] estimated population in 1968 was 33,600 in Greeley and that there were 2,400 people, approximately, in the fringe area, for a total of 36,000.

Q. Also in connection with this report, did you consider the entry of new business into Greeley or the Greeley area?

A. Yes, I did.

Q. And what were your conclusions with regard to that?

A. First of all, in the immediate Greeley area I investigated the proposed shopping center locations at two points along the by-pass highway and I also reviewed the business in the downtown area. I am not sure what you mean by what were my conclusions about the business in the Greeley area. I looked at business in the Greeley area with an eye to what I was investigating.

Q. Yes, sir, did you consider the entry of Kodak into the area?

A. Oh, yes, sir.

Q. What were your conclusions with regard to that?

A. Well, Kodak, of course, was a fact. It had just announced that it was entering on a location about 13 or 14 miles away from Greeley and it was a location near Windsor and at about a central location between the three largest cities in the area. My own feelings at the time I prepared [475] this report were that the entrance of Kodak into this area would add to the employment base and to the business and population of these communities, including Greeley.

Q. When you were preparing this report, did you consider the banks in Greeley at the time?

A. Yes, I did.

Q. And what conclusions did you make as regards these banks?

A. My general conclusion was that Greeley was well served with banking services at that time.

Q. Did you investigate the growth in deposit base of these banks?

A. Yes, I did, and I compiled statistics about what the increase in deposits had been for each of the banks.

Q. Do you recall what your conclusion was as to the increase of the funds, and again you may refresh your recollection if you don't recall?

A. My conclusion was that there had been a steady increase in deposits in the banks in the Greeley area.

Q. Did you draw any conclusion as to the increase in deposit base of the newest banks in Greeley?

A. I compiled these statistics, if that's what you mean, yes.

* * * * *

[476] A. (Continued) My memory is that the newest banks in Greeley had been increasing steadily in their deposit experience since they had opened.

THE COURT: You are now referring to the smaller——

THE WITNESS: Yes, the newer banks, sir, and they are also smaller, or were at that time, anyway.

Q. In connection with this report, did you investigate the success of various shopping center banks throughout the [477] State of Colorado?

A. Yes, I did compile statistics about banks located in regional shopping centers throughout Colorado.

Q. And could you state your conclusion with regard to these banks?

A. My conclusion was that they had had rather dramatic increases in deposits and growth as a general statement.

Q. And in compiling this report, did you consider the average family income in the City of Greeley?

A. Yes.

Q. And what was your conclusion as to this?

A. As I recall, it was approximately $8,500 per family, and my estimate was that this would increase.

THE COURT: In getting back to these banks, these small banks——

THE WITNESS: Yes, sir.

THE COURT: Did you ever discover that they were getting a large proportion of the business of the community, that they were gaining in that respect? No doubt they

are gaining, but were they getting—was their proportion of the community business increasing?

THE WITNESS: I don't recall, Your Honor. I would have to——

THE COURT: In relationship to the other banks?

THE WITNESS: I don't recall. I only remember that [478] they were steadily increasing at the time I did the study two years ago.

THE COURT: Okay, excuse me.

Did I break your chain?

MR. BRENAN: A little bit.

Q. Mr. Small, in compiling this report did you make any estimates as to the business that a new bank in Greeley could expect within any period of time?

A. I made a very rough estimate as to the experience a bank might have at one specific location in Greeley.

[479] Q. Would you state what that—could you elaborate a little on that?

A. Oh, this was a location on the south side of the state highway by-pass at approximately 23rd, and this was the location that I had recommended that if the bank were so inclined I would consider better than the others in potential at that time and I did investigate the number of homes, rate of development, and made a rough approximation as to what the deposit experience might be for checking accounts and savings accounts.

Q. Do you recall what your approximations were?

A. No, I don't.

MR. BRENAN: Your Honor, may I refer the witness to a particular page in the document in order to refresh his recollection as to his estimates at that time?

MR. WILLIAMSON: Your Honor, that's not refreshing recollection, trying to impeach the statement. He has the answer. It is his witness.

THE COURT: True. We will permit him to do it.

A. My estimates were in Year One for only new personal checking and saving accounts $447,200.00. The second year, $807,700.00, and the third year $1,349,200.00.

Q. Now, Mr. Small, did you as a result of your investigation and your reports make any recommendation to Mr. Gilbert and Mr .Eaton?

[480] A. Yes, first of all, I felt that the location I just referred to at 23rd and highway by-pass I felt to be at that time the best in potential for a new bank. Second, though, I felt this would only be a good potential if a regional shopping center were actually developed at that location, and I recommended that studies leading to an application for a charter only be made if this shopping center actually became developed as a regional facility. Those are my major recommendations.

MR. BRENAN: At this point, Your Honor, I believe we have summarized Mr. Small's findings at that time and laid a foundation for the entry of this document into evidence and I again move it be accepted into evidence.

THE COURT: Denied. I don't think it is admissible testimonially. Hasn't he testified to everything you want? As such, I mean, hasn't he given the estimates of it?

MR. BRENAN: Yes, sir. Could I ask him just a couple of more questions in that regard?

THE COURT: Sure.

Q. Mr. Small, at whose request was this report made?

A. It was at the request of Mr. Rex Eaton, who is and was executive vice president of the bank.

Q. Of which bank is that, sir?

A. The First National Bank of Greeley.

MR. BRENAN: I have no further questions, Your Honor.

[481] THE COURT: Mr. Williamson.

CROSS-EXAMINATION

By MR. WILLIAMSON:

Q. You have testified on direct, sir, that your recommendation as to the suburb shopping area being the best one as far as potential was a qualified recommendation, is that not correct?

A. That is correct.

Q. Do you have any knowledge as to whether or not any of these pre-conditions have been satisfied to date?

A. None of them have to my knowledge.

Q. And in the absence of any of these qualifications being met, it would not be your recommendation to have a new banking facility in Greeley or the Greeley area, is that correct?

MR. BRENAN: I don't believe he said that, Your Honor.

MR. WILLIAMSON: I am asking him.

MR. BRENAN: He only made a recommendation as to one particular area, not as to the entire Greeley area.

THE COURT: Well, you may ask him the question.

A. In the absence of the conditions I just mentioned being met, I would not recommend that application be made for a charter for a new bank in the Greeley area that I studied. Does that answer your question?

[482] Q. Yes, sir, and I take it based upon your analysis generally of the banking conditions in the City of Greeley it is your conclusion and opinion that Greeley is presently well served with banking facilities, is that not correct?

MR. BRENAN: Excuse me, Your Honor. I believe Mr. Small has testified only as to what was present in 1969 and not as to the present.

MR. WILLIAMSON: As of 1969.

THE COURT: He may answer. Go ahead.

A. As of the time I did the report I felt that Greeley was well served with banks, yes.

Q. Do you have any information 1969 to the present which changes that opinion?

A. I am not aware of any information that would change that opinion, no.

Q. Did you do any analysis of the State Bank of Greeley?

A. I compiled deposit experience for all the banks in Greeley at the time I did this report in early 1969.

Q. Is it your opinion that the State Bank of Greeley was making moderate progress or margin progress?

A. I do not recall what deposits—but I don't think I would—my memory is none of the banks were making less than what I would call moderate progress.

Q. When you made your population estimates, did you consider the fact that student population was included in the [483] Bureau of Census figures?

A. Yes.

Q. And was your basis, part of your assumption, that some of the increased growth would result from the location of the Kodak plant?

A. Yes.

Q. Have you familiarized yourself with the testimony in this trial of the plant manager, Howard Smith, of Eastman-Kodak?

A. This morning you gave me—I don't recall whether it was all of his testimony, but copies of part of his testimony at least, and I did read through those, yes.

Q. I gave you from Page 120 to Page 132, is that not correct?

A. I don't recall the page numbers.

Q. Well, let me show it to you and see if I can refresh your recollection. I represent to you and to the Court I gave you the entire transcript of the testimony of Mr. Smith.

A. Yes, these are the sheets that I read this morning.

Q. Do you agree with the statements that Mr. Smith made?

A. Which ones?

Q. Well, namely, that the easterners were not likely to inhabit Greeley because of the peculiar repulsion with the odors?

A. I don't know.

[484] Q. Did you take that factor into consideration when you made your population estimates?

A. Certainly, I was aware of the packing plant in Greeley and the odors that occur in that area.

Q. Did you think it would have any impact upon the immigrants?

A. To tell you the truth, I consider it a minus factor in the attractiveness of Greeley. I always have. As to whether I did at that time, I simply don't recall.

Q. Does it surprise you that only five people from the Eastman-Kodak Company in the east inhabited Greeley?

A. Yes, in the light of what I know about the area up there, I was somewhat surprised to read this.

Q. When you did your calculation, did you realize the Eastman-Kodak plant wouldn't become fully effective until in 1975?

A. I don't remember the years, but I do remember reviewing the estimates as to the number of employees that would be on site in 1971 and up to 1975.

Q. Based on these new factors of 1969 to the present, would you say that even that particular area you recommended as less attractive?

A. I'm not sure I understand your question. As to the effect of Kodak's projections——

Q. No, as to the effect of what has happened in fact

[485] between 1969 and the present, namely five people have moved into the Greeley area from Eastman-Kodak, namely the Kodak plant is not going on stream, not likely to go on stream until 1975. Do these two facts make even that recommendation weaker today than when made?

A. I would need to have a good deal of additional information that I acquired not just from one source before I would be prepared to answer that question.

Q. Well, let me speak about one additional factor. Are you aware of the fact that a new shopping center in that area has actually gone on stream, so to speak, and beaten the Scott groups to the punch in that area?

A. I am aware of the competitive shopping center that's located not too far away, I believe at about 11th and north of the by-pass, but I was——

Q. Does this weaken that conclusion then?

A. No, it doesn't because I was aware of the proposed center at that location at the time I did this work.

Q. It does bear upon the likelihood of whether this particular Scott area would be developed, does it not?

A. Only partly. It would weaken the economic potential for a new shopping center at the Scott location, but again I don't know and I haven't done any studies in Greeley since that time. I don't know that the center proposed on the Scott location is not feasible at this time. I have only heard that [486] it is not developed.

Q. So you determined then upon a large order of the fact that Wards or Sears or somebody of that magnitude would have to be in the shopping center and they are not there and until and unless they are there you would not consider that particular site, is that correct?

A. That is generally correct. I recommended that they go ahead with work on a new bank only if a regional center developed, and a regional center would have to have a major tenant of the nature of Wards or Sears or a major department store, something of this nature. Now, if this has not happened, my conclusion would be to not go ahead.

Q. In any event then there is no immediate prospect for a new banking facility in that particular area?

A. I have done no studies on it as such, but at the time I made this one that would certainly be my recommendation.

Q. Based upon estimates and, of course, you would have to reevaluate those estimates, correct?

A. I would certainly want to if I were asked by the bank to make a recommendation today.

Q. If you had been asked by the bank to make a full study for the purpose of the pending application, I take it you would have gone into much greater depth, is that not correct?

A. That is correct.

[487] Q. And you only spent a very short period of time in preparing this report, is that correct?

A. As I remember, it was a period of less than two months, yes.

Q. During that period of time, you also spent quite a bit of it in the hospital, is that correct?

A. Much of it, yes.

Q. It follows, does it not, sir, from your statement that you believe that the Greeley downtown areas was at that time in 1969 well served with its banking facilities, that you would not recommend the application for a charter for a downtown bank, is that not correct?

MR. BRENAN: Your Honor, he is asking for a recommendation at the present time based on knowledge of two years ago.

MR. WILLIAMSON: I will limit it to 1969.

A. That would be correct.

MR. WILLIAMSON: Thank you very much. No further question, Your Honor.

REDIRECT EXAMINATION

By MR. BRENAN:

Q. Mr. Small, have you had any connection or made any investigation of Greeley since you finished compiling this report in 1969?

A. Only one very minor recommendation for the same [488] client that involved my being in Greeley for a couple of hours one day, but that's the only one.

MR. WILLIAMSON: Excuse me, is this redirect or is it impeachment?

THE COURT: I don't think it is impeachment. I think it is redirect. I believe it is. I think it is a clarification. He asked him if he had made any subsequent studies. I think

what he wants to find out is whether his conclusions have been brought up to date.

Q. That sounds like an excellent question. Have your conclusions been brought up to date?

A. No, they have not.

Q. How do you know many of the factors that Mr. Williamson brought up on cross-examination?

A. Well, again, I'm not sure which ones you are referring to.

Q. Well, do you have direct knowledge of the fact that one shopping center is further ahead than the other?

A. Only from second-hand sources, newspaper accounts, discussions with people I know from the Greeley area, that's all.

Q. There is no investigation of your own to reveal this?

A. No.

* * * * *

[490] Q. Mr. Small, could the presence of Kodak in Windsor have an effect on the economy of Greeley other than just by the mere addition of members of Kodak families to the population of Greeley?

MR. WILLIAMSON: Object, Your Honor, on the grounds the question is speculative and beyond his direct.

THE COURT: Overruled.

Q. You may answer.

A. I would feel that it certainly would have an effect on Greeley, economically, adding to local business and generally in the economy.

MR. BRENAN: No further questions, Your Honor.

MR. WILLIAMSON: I have no further questions.

(Witness excused.)

THE COURT: We will take a short recess.

(Whereupon, the trial recessed at 3:14 p.m. and resumed at 3:35 p.m.)

MR. WILLIAMSON: With leave of Court, the defendants would ask that Mr. James Small be recalled for one further question.

[491] THE COURT: Very well.

(The witness recalled.)

RECROSS-EXAMINATION

By MR. WILLIAMSON:

Q. Mr. Small, the government has previously elicited testimony from an expert witness chosen in its behalf with respect to characterization of the Greeley—or Greeley city and Greeley area, and the conclusion of that expert is that the Greeley area is booming. Would you agree with that conclusion?

MR. BRENAN: Object to that question, Your Honor, on the grounds Mr. Small is—has not had any detailed connection with Greeley since the preparation of that report two years ago.

THE COURT: Well, we will allow him to qualify the witness then, if he can.

Q. As of the time that you made your most recent investigation of the Greeley area, I take it that you would not characterize it as a booming area, is that correct?

A. That is correct. I would characterize it in terms of *moderate measured growth,* but certainly not in terms of, quote, booming, unquote.

MR. WILLIAMSON: Thank you very much. No further questions.

MR. BRENAN: I have nothing further.

[492] (Witness excused.)

MR. SCHOEPKE: Plaintiff calls Mr. Thomas Moon.

THOMAS MOON,

a witness called by and on behalf of plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. SCHOEPKE:

THE COURT: Give us your full name, address, and occupation, please.

THE WITNESS: My name is Thomas Moon. I live in Colorado Springs at 77 Marlin Road. President of the First National Bank of Colorado Springs.

Q. (By Mr. Schoepke) Mr. Moon, in addition to your position as—well, you are president of—let me withdraw everything.

Mr. Moon, you are president, as you just stated, of the First National Bank of Colorado Springs?

A. Yes, that's correct.

Q. Is that bank affiliated with any bank holding company?

A. Yes, Affiliated Bankshares of Colorado.

Q. And do you have any position with Affiliated Bank shares of Colorado?

A. Yes, I'm president of Affiliated Bankshares.

Q. And did you participate in the formation of [493] Affiliated Bankshares of Colorado?

A. Yes, I did.

Q. And did you sign the application to the Federal Reserve Board seeking permission to form Affiliated Bankshares of Colorado?

A. Yes, I did.

Q. Now, when you participated in the formation of Affiliated Bankshares of Colorado, first, were you aware of the Denver United States Bancorporation, whose name has since been changed to United Bancorporation of Denver? Were you aware of the existence of that organization?

A. Yes.

Q. And were you aware at that time of the acquisition of banks in Colorado by the Denver U. S. bank holding company?

A. Yes.

Q. And at the time you decided and conducted the negotiations to form Affiliated Bankshares of Colorado, were you aware of the First National Bancorporation holding company in Denver?

A. Yes.

Q. And were you aware at that time of the negotiations which the First National Bancorporation was conducting with regard to acquiring banks in the state of Colorado?

A. Yes.

Q. Did your knowledge with respect to these efforts [494] by the Denver U. S. Bancorporation and the First National Bancorporation of Colorado to acquire banks in the state have any bearing on your decision to form a holding company of your own, namely, Affiliated Bankshares of Colorado?

A. Yes, it would have a bearing on it.

Q. And could you tell us in what way it had a bearing on your determination to form this holding company of your own?

A. Well, it was one of a number of considerations, but one of these considerations of course is our desire to continue to compete with the best banking organizations in the state.

Q. Did you feel that it was necessary for you to form this holding company of your own in order to maintain your competitive ability with regard to these two holding companies, namely Denver U. S., now United, and First National Bancorporation of Denver?

A. You said necessary? I think desirable. Pardon me. It was not necessary, no.

[495] Q. But did the existence and the expansion program of these two organizations influence you in your decision to——

A. Yes.

Q. —to form a holding company of your own?

A. Yes.

Mr. Schoepke: I have no further questions.

The Court: What banks are in the organization?

The Witness: There are 13 banks, three in Colorado Springs, First National Bank of Colorado Springs, Fort Carson National, Bank of Manitou. In the Boulder area, there is First National Bank in Boulder, Arapahoe National Bank, in Lafayette and Louisville, and in the Greeley area, West Greeley, Cash National and National Bank at Ault, Ault National Bank, if you please—Farmers National Bank of Ault.

The Court: Farmers?

The Witness: Farmers National Bank in Ault, yes.

Cross-examination

By Mr. Metzger:

Q. Mr. Moon, was your principal and primary reason for starting the Affiliated Bankshares the desire of the members of your organization to take advantage of the economies of scale attendant upon a holding company structure?

The Court: Take advantage of what?

Mr. Metzger: Of the economies of scale attendant upon the formation of a holding company structure.

* * * * *

[496] Q. Were your principal and primary reasons re-

lated to those advantages that you felt inherent in holding company structure?

A. I find it difficult to answer yes. This was certainly a major consideration.

[497] Q. Let me ask you this question. If no one else had started a holding company in Colorado, would you still have tried to assemble the ABC, Affiliated Bankshares, anyway, for the reasons I stated in the first question?

A. Yes, this would have been—we believe is a highly desirable thing to do.

Q. And that you would have created your own holding company if no one else had created one?

A. Yes, I think that is——

Mr. Metzger: Now, this question is outside the scope of the direct examination, Your Honor, and I would ask the one question only to save the time of the witness on the phase of the case coming up next. The question if I may be indulged is this.

Q. Your company does not now, your holding company does not now, offer a full line of correspondent services to all other banks outside the system, do you, sir?

A. No, not a full line, no.

Q. Would you feel any need to have a Denver affiliate in order to offer such services?

A. A need to have one?

Q. Yes.

A. I don't think it would be absolutely essential.

Q. It would be useful, but not essential?

A. It would be highly desirable, but not essential.

[498] Q. You could operate as a holding company offering full correspondent services without it?

A. Yes, I believe we could.

Mr. Metzger: Thank you.

Mr. Schoepke: No redirect, Your Honor.

The Court: Aren't you apprehensive that it might have a concentrating effect structurally?

The Witness: What might have——

The Court: Concentrating effect structurally as far as economic structure of the communities concerned, such as we have been hearing about.

The Witness: Forming a holding company might concentrate——

THE COURT: Yes.

THE WITNESS: No, I—our reason for doing this is to be able to provide better services in other areas in the state and I don't think it has a major effect on concentration.

THE COURT: You do not think there is any hazard that you will develop some parallelism in relationship with the Exchange National and the other banks in the Colorado Springs area?

THE WITNESS: I see no reason for that. We are active competitors now. I do not see why that would change.

THE COURT: I have nothing further.

MR. SCHOEPKE: Thank you, Mr. Moon.

[499] MR. LIPKOWITZ: Plaintiff calls Mr. H. J. Bleakley.

H. J. BLEAKLEY

called as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: Take the witness chair. State your name, address and occupation, Mr. Bleakley.

THE WITNESS: My name is H. J. Bleakley. I live at 7262 Old Post Road, Boulder. I am president of Peoples Bank and Trust of Aurora, Colorado.

DIRECT EXAMINATION

By MR. LIPKOWITZ:

Q. Mr. Bleakley, are you here under subpoena?

A. I am.

Q. Would you also tell the Court the names of any other banks that you happen to be affiliated with?

A. I am president of Mid States Bank, which is located at Buchtel Boulevard and South Colorado, and I am chairman of the Board of Peoples Bank of Arapahoe County on South Havanna Street.

Q. And Mid States I take it is in the City and County of Denver?

A. It is.

Q. How long have you been a banker?

A. About 20 years or more.

Q. Have you ever founded a bank?

[500] A. Yes, these particular banks that I am associated with now, I was an original founder.

Q. Could you tell the Court, please, how you go about founding a bank?

A. Well, first, you would determine if there is a need for a bank in the particular area in which you wish to found a bank, and then, of course, it is necessary that you raise the capital to originate the bank and then, of course, it is necessary to have a charter and to get Federal Deposit Insurance. Probably one of the more difficult things to do is to raise the capital. If you don't have sufficient capital, then the normal procedure is to borrow it from one of the major downtown banks, who do furnish this type of loan to bankers, small banks.

Q. You used the phrase "downtown." Would you refer to the city you are talking about, please?

A. Denver.

Q. Will you give the Court some idea of the banks that you would consider going to when trying to obtain some capital with which to start one of the banks that you started?

A. Well, the primary banks who are in the correspondent banking business in Denver are, of course, the larger banks, which would be the First National, the United Bank and Colorado National and the Central Bank, and I understand Security National is also doing some of it.

[501] Q. Are there any others?

A. Not to my knowledge.

Q. May I refresh your recollection? I believe——

Mr. Williamson: I object, that's not refreshing his recollection. He is attempting to impeach him.

The Court: Overruled. We will permit.

Q. Are you aware of a bank in downtown Denver known as the American National Bank?

A. Oh, yes, I am sorry, American National Bank is also very active in correspondent relationships.

Q. Would you say that these are the banks that you would consider going to in trying to raise capital by pledging bank stock in order to start a new bank?

A. Yes, you would select one of these and then go talk to their officers.

Q. Have you ever considered going to any other type of financial institution in order to obtain this sort of a loan in order to start a bank?

A. No. I don't know of any other type of financial institution that would be qualified to handle or that would handle it.

Q. Have you ever considered going outside of Denver in order to obtain the money on this sort of a bank stock loan in order to start a new bank?

A. No, I wouldn't think it would be practical.

[502] Q. Do the banks that you have started customarily use the same Denver bank from which you obtained a bank stock loan as their prime correspondent?

A. Yes.

Q. Would you explain to the Court, since this is really a new phase of the case, what is meant by a prime correspondent?

A. Well, the prime correspondent renders a number of services for the small bank. In addition to helping them with the capital by making a loan on the stock of the bank, they also clear the checks and furnish them with information on purchase of bonds and give them many other services which help in the conduct of a new bank.

Q. Would you say that this is a way of bringing economies of scale to your new, and thus at the time that they are new, small banks?

A. Yes, I would, and in addition to the things I just mentioned we very often find it necessary to go to our correspondent bank to take a part of a loan for one of our customers when that loan request is in excess of our legal loan limit.

Q. Is that wh...t you call an overline loan?

A. Yes.

Q. Now, could you use a correspondent bank in another city such as Chicago, St. Louis, Kansas City or Omaha as a prime correspondent?

A. Well, it would be possible, but I think very [503] impractical, as it would be very foolish in my opinion to send checks to Chicago to be cleared when they were drawn on another Denver bank.

Q. And I take it that in your banks you get a lot of checks, most of them or a large percentage of them at least are from Denver?

A. Primarily. They are all from the immediate area.

Q. Do you use the downtown Denver banks as a depository for any sort of securities?

A. Yes, when we purchase municipal bonds or government bonds, their bond men assist us and gives us some up to date information on those bonds and then they act as a depository for them.

Q. Do you happen to have in any of your banks any deposits from any municipality in Colorado or from the State of Colorado?

A. Yes, we have.

Q. Are you under any obligation then to post some sort of security for these deposits?

A. Yes, if you have a state or municipal or government deposit, it is necessary that you pledge 110 percent of the amount of the deposit either by government bonds or municipal bonds and they must be pledged with another bank and the correspondent bank usually takes care of that.

[504] Q. And those correspondent banks that you are referring to are in Denver?

A. Yes.

Mr. Williamson: Objection, leading.

The Court: Overruled.

Q. Where are those other correspondent banks you are referring to?

A. The correspondent banks are in Denver primarily.

Q. Could you post this security, these bonds, in a bank outside the State of Colorado?

A. I'm not certain if that would be legal. It is my understanding that since it is for a Colorado community that it would have to be posted in Colorado.

* * * * *

[505] Q. As a practical matter, have you ever deposited bonds from municipal or security bonds outside of the State of Colorado?

A. No, sir.

Q. Have you ever deposited them outside the Denver area?

A. No.

Q. Do you happen to know any other bankers in this community who have ever founded banks or purchased banks?

A. Yes.

* * * * *

[506] Q. All right. Do you happen to know how they obtained money with which to start their banks?

A. Yes.

Mr. Williamson: Your Honor, I still renew my objection.

THE COURT: He already testified that this is the general approach, the accepted one, the standard one, to go to the downtown banks. I don't know how he can add much to that.

MR. LIPKOWITZ: No further questions.

CROSS-EXAMINATION

By MR. WILLIAMSON:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Mr. Blakely, the People's Bank and Trust Company in Aurora is a bedroom community, so to speak, of Denver, is [507] that not correct?

A. Well, I've heard that referral made here today. I think there are a lot of people who live and work in Aurora. There are people who live in Aurora who also work in Denver, but I will say that Aurora has a great many people working in Aurora. They have a number of plants there, such as Western Electric and so forth.

Q. Have you ever made any studies to determine how many of the people who live in Aurora work in Denver?

A. No, not completely. I have made some various checks to see where the people——

Q. What kind of checks?

A. Well, we look at our checks to see people who bank with us and where they live and where they work and so forth, but I wouldn't be in a position to make any definite statement as to what percentage of people who live in Aurora actually work in Aurora.

Q. Mid States, is that in part of Denver?

A. It is in Denver, yes.

Q. People's other bank, that's in Denver as well.

A. That's in Aurora.

Q. But that's part of Denver, is it not?

A. No, it is not.

Q. Denver County?

A. No, it is in Arapahoe County and in the City of [508] Aurora.

Q. Is it your opinion that Denver is an overcrowded area for banks?

A. I think there are enough banks here to take care of the necessary banking facilities.

* * * * *

[509] Q. Do you own any stock in a holding company?

A. No.

* * * * *

[510] Q. All right, do you own any stock in People's Bank and Trust in Aurora?

A. Yes, I do.

Q. Do you own any stock in Mid States?

A. Yes.

Q. Do you own any stock in People's in Arapahoe?

A. Yes, sir.

Q. Do you own controlling interest in each one of those banks?

A. No, I don't.

Q. Which one do you have a controlling interest in?

A. People's.

Q. With respect to the purchase of your stock in any of these affiliates, you indicated that you had to borrow to get the capital, is that not correct?

A. Yes.

Q. Are you aware or unaware as to the method in which others who have purchased controlling stocks in banks have financed those purchases?

A. I have knowledge of quite a few people who have borrowed money and how they borrowed it.

Q. Are you aware of the fact that many of those [511] people obtained the capital with which to purchase that stock from banks outside of the State of Colorado?

A. I only know of one bank that was started in the City of Denver with capital acquired from outside of the state and that was a very unsatisfactory experience for both the banker and the bank who loaned the money.

Q. Are you testifying from direct knowledge on that?

A. Positively.

Q. I take it then that you were one of the participants?

A. No, I was not a participant.

Q. Is this based upon what was told to you?

A. It was told to me and I happened to look at the assets of the bank in question personally.

Q. Who told you this?

A. Who told me what?

Q. Who told you they had an unsatisfactory experience outside of the State of Colorado?

A. The banker.

Q. What's the name of the bank?

A. First National Bank of Dallas.

Q. What's his name, what's the name of the person who obtained the loan from the First National Bank of Dallas?

A. Yes.

Q. Who obtained the bank——

[512] A. Seventeenth Street Bank.

Q. What individual there?

A. Earl Kramer.

Q. So your entire opinion is based on your one conversation with Earl Kramer, is that correct?

A. No, I did not say that.

Q. Tell me what other bases you have for your conclusion.

A. I said it was an unsatisfactory experience to my knowledge.

* * * * *

[513] Q. I am asking you, are you aware of any other situations in which a person who has purchased stock in a bank in Colorado went outside the State of Colorado?

A. This is very possible. I don't know where every banker in Colorado obtains his financing.

Q. All right. But Mr. Kramer did not say it was unsatisfactory, did he?

A. Well, Mr. Kramer is no longer in the business and I would say that was unsatisfactory.

Q. You were, were you not, opposed to branch banking?

MR. LIPKOWITZ: I object.

Q. You were opposed to branch banking?

MR. LIPKOWITZ: This is outside of the scope of direct examination.

MR. WILLIAMSON: Goes to the question of bias, Your Honor.

THE COURT: We will permit him to answer the question. Are you opposed to branch banking?

THE WITNESS: Yes.

THE COURT: Okay. Is that a sin, too?

Q. Is it not fair to state that you opposed the attempt of the National Bank of Denver to establish branch banking in the State of Colorado?

[514] MR. LIPKOWITZ: Objection, National Bank of Denver——

THE COURT: The First National?

[515] MR. WILLIAMSON: First National.

THE COURT: I think he's referring to efforts to enact the law in the state legislature, general assembly, authorizing branch banking, and I think he wants to know whether you opposed that measure in some way when it was before the general assembly. Is that what you're asking him?

MR. WILLIAMSON: I am, Your Honor.

A. I'm opposed to branch banking. I have always stated that.

THE COURT: Did you oppose the particular measure?

THE WITNESS: Well, I don't know exactly what he means by opposing it.

THE COURT: Well, he wants to know whether you were in opposition to the First National Bank which—together with Colorado National that sponsored this legislation.

THE WITNESS: I was opposed to that legislation, yes, sir.

THE COURT: That's what he's trying to find out; whether you have a feeling of hostility toward the First National Bank.

THE WITNESS: No, I certainly have no—I have an account with the First National Bank from Peoples Bank and Trust, so if I was really hostile toward them I think I'd close the account.

Q. In point of fact the acquisition then by First [516] National Bancorporation of the First National Bank of Greeley has had no impact at all upon your operation, has it?

A. Pardon?

MR. WILLIAMSON: Would the reporter please read back the question.

THE COURT: Has the acquisition or attempted acquisition of the First National Bank of Greeley had any effect upon your operations?

THE WITNESS: I don't think it would have any actual effect on the operation of a bank in Aurora for the acquisition of a bank in Greeley, no.

Q. You have had discussions in the past, have you not, with respect to sale of your controlling interest or the sale of your stock in these banks, have you not?

A. No.

THE COURT: To whom?

Q. Have you had any discussions?

A. I have had people ask if I'd like to sell but if that's a discussion—I don't construe that as a discussion.

Q. Have you had any discussion with respect to buying of stock in any other bank?

A. I have discussed buying stock in banks in the past, but I didn't buy any.

* * * * *

[517] Q. (By Mr. Williamson) Have you ever protested with respect to seeking by another of an application for a charter in any areas served by the banks in which you hold a stock interest?

A. Yes.

Q. Isn't it a fact you opposed every single one of those areas?

A. I don't know that I was opposed to every single one.

Q. Do you know of any you have not opposed?

A. I don't recall at this moment.

MR. WILLIAMSON: No further questions.

THE COURT: Do you wish to question him any further?

[518] MR. LIPKOWITZ: No redirect, Your Honor.

(Witness excused.)

THE COURT: Call your next witness.

MR. SCHOEPKE: May it please the Court, Plaintiff calls Mr. Harry Bloom.

HARRY BLOOM

a witness called by and on behalf of plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. SCHOEPKE:

Q. THE COURT: Give us your name, address and occupation, please.

THE WITNESS: Harry Bloom. I live at 2059 Joliet Street, Aurora, Colorado, and I am State Bank Commissioner and Chairman of the State Banking Board.

Q. (By Mr. Schoepke) Mr. Bloom, how long have you been state banking commissioner?

A. Since January 1965.

Q. And on the basis of your knowledge and experience

as state banking commissioner are you familiar with the banks in Denver which offer correspondent banking services?

A. Generally, yes.

Q. Could you tell us which ones?

A. The principal ones are the five largest banks in Denver, First National, United Bank, Colorado National, American [519] National, Central Bank & Trust, and more recently Security National has become involved.

Q. Now, is the state banking commission office concerned with the issuance of charters to newly organized banks?

A. Well, we are the body that either grants or denies the charters.

Q. And in connection with your activity in granting or denying charters of banks, are you familiar with the method by which new banks are chartered?

A. Yes.

Q. And have you conducted a survey in connection with the method of financing which was used in the chartering of new banks?

A. I have checked our records in our office, yes.

Q. And first off, I forgot to ask, Mr. Bloom—do you appear here under subpoena?

A. Yes, I do.

Q. And how far back did you check the records of your office with regard to the method by which new banks which your office chartered were financed?

A. Since I took office in 1965.

Q. And how many new charters did you cover in the course of your survey?

A. There were 25 charters that were authorized, 19 of which have been issued and the banks are in operation today.

[520] Q. Now, could you tell us of the 19 that are in operation how many were chartered—how many were financed by Denver banks?

A. There were of the 19 that are in operation, there were 11 of the applications in which stock was financed by a major Denver bank or—when I say major Denver bank—by one of the five large banks in Denver that I have mentioned.

Q. And how about the remainder?

A. There were four in which there was no financing needed by the applicants and the other four were financed

by banks located in Pueblo, Englewood, and Greeley. And I think one—in one case a small bank in Denver.

Q. Now, of the eleven banks that were financed by the major downtown Denver banks that you have enumerated, could you tell us who became the primary correspondent of the new chartered bank?

MR. WILLIAMSON: Objection. He has laid absolutely no foundation for that question.

THE COURT: If you know of your own knowledge.

A. Our record shows that and our examination reports show it. The bank that financed the stock normally became the principal correspondent.

Q. What do you mean by principal correspondent?

A. The bank they cleared through on a daily basis and possibly kept their security in safekeeping and purchased [521] excess loans, possibly purchased participation loans.

Q. Now, were these newly chartered banks that you have mentioned—were they confined to Denver or were they in various places throughout Colorado?

A. The actual location of the banks chartered?

Q. Yes.

A. They are scattered throughout the State of Colorado.

Q. And could you tell us on the basis of your general knowledge and experience in the banking business as a banking commissioner and a banker if the financing of new banks by the large Denver banks engaged in correspondent banking a usual or unusual way of financing new banks?

A. It's a very common practice.

MR. SCHOEPKE: I have no further questions.

CROSS-EXAMINATION

By MR. METZGER:

Q. Mr. Bloom, would you have any objection if I were to organize a bank and finance it in New York?

A. No.

Q. Mr. Bloom, in your examination of this question, how many of the banks that were organized in this time period, 19, I believe, were financed in whole or in part by the First National Bank of Denver?

A. One that I——

Q. And that wasn't entirely, was it? There was [522] financing by some of the shareholders, is that correct?

A. Yes.

Q. And when you speak of financing by some of the shareholders, these—some shareholders have their own sources of funds?

A. Certainly.

Q. And some do not, is that right?

A. Yes, sir.

Q. And some use bank financing and some do not; some use their own resources, is that correct?

A. Yes.

* * * * *

[524] MR. MALASKY: Your Honor, the plaintiff calls Mr. Stanley Allen.

STANLEY ALLEN,

a witness called by and on behalf of the plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. MALASKY:

THE COURT: State your name and address and occupation, Mr. Allen.

THE WITNESS: My name is Stanley A. Allen.

MR. METZGER: Your Honor, before this witness testifies, may we approach the bench?

THE COURT: Let's get his address and occupation [525] first though. That's what I asked him.

THE WITNESS: Yes, sir. Durango, Colorado. Vice president, cashier of the Burns National Bank.

AT THE BENCH

MR. METZGER: Your Honor, this witness was a late witness on the part of the government. When Mr. Williamson of my staff asked to speak to the man, Mr. Malasky came up——

THE COURT: You mean to Mr. Allen?

MR. METZGER: Yes, Mr. Allen. Mr. Malasky came up to Mr. Williamson in front of the witness and advised him that he would seek physical violence if he found him speaking to

one of his witnesses. The witness—he thus has had no opportunity whatsoever to speak to the witness.

THE COURT: How did Mr. Williamson react?

MR. WILLIAMSON: I trembled.

THE COURT: You don't think it scared him, do you?

MR. METZGER: I think it denied us the opportunity to speak to the witness, Your Honor.

THE COURT: Well, we will take a few minutes recess and you can interview him if you wish.

MR. SCHOEPKE: I'm sure Mr. Malasky—he is inexperienced, and I will admonish him not to do that again.

IN OPEN COURT

THE COURT: Well, lots of things happen in the heat of a trial, and so long as there is no harm done——

(Whereupon, the trial recessed at 4:23 p.m.)

[526] (After a recess, the Court resumed at 4:33 o'clock p.m.)

THE COURT: All right, Mr. Allen.

DIRECT EXAMINATION

By MR. MALASKY:

Q. Mr. Allen, have you stated for the record your present position?

A. Yes, sir, vice president-cashier of the Burns National Bank of Durango.

Q. And how long have you been vice president and cashier of Burns National Bank?

A. Vice president and cashier since January 1st of 1969.

Q. And before that?

A. I was cashier.

Q. And how long have you been with the Burns National Bank?

A. November 1st of this year will be 25 years.

Q. Mr. Allen, are you familiar with the term correspondent banking?

A. Yes.

Q. And could you describe what correspondent banking is?

A. Actually, I would say it is the wholesale end of banking. It is where one bank can provide services and [527] information for another bank.

Q. And are these services available to you from any source other than a commercial bank?

A. No, sir.

Q. Now based upon your 25 years of banking experience, Mr. Allen, do you consider correspondent banking as a distinct phase of the banking business?

A. Yes, sir.

Q. Do you have any correspondent banking customers yourself in your own bank?

A. Yes, sir.

Q. That you provide services to?

A. Yes, sir.

Q. And who are those banks?

A. We have the Bank of Ignacio at Ignacio, Colorado, and the Dolores State Bank in Dolores, Colorado.

Q. Now, Mr. Allen, do you consider the Burns——

MR. WILLIAMSON: Excuse me, is that answer complete? I think you interrupted the witness. Is your answer complete?

THE WITNESS: Complete.

Q. Now, Mr. Allen, do you consider the Burns National Bank to be a substitute for a Denver bank for your two correspondent customers?

A. Could I refer to the last question?

[528] Q. Yes, please.

A. On the correspondent banks?

Q. Yes.

A. We do have two other banks that carry accounts with us.

Q. And who are they?

A. Bank in Garden—the Garden National Bank of Garden City, Kansas, and the American National Bank in Amarillo.

MR. WILLIAMSON: That's Amarillo, Texas?

THE WITNESS: Yes.

Q. Would you explain what kind of accounts these are?

A. These are more or less dormant accounts that they use for specific clearance of items.

Q. What type of items?

A. Oh, checks, that type of——

Q. Do you provide a full range of correspondent banking services to those two banks?

A. No, sir.

Q. Now, do you consider yourself for the two Colorado banks which you mentioned, the Bank of Ignacio and Dolores State Bank, as a substitute for a Denver bank?

A. No, sir.

Q. For the correspondent banking services, and would [529] you please explain why or why not?

A. We do not feel that we are decentralized enough or have the personnel to give complete service as a correspondent bank.

Q. Would you explain specifically what you do for your two Colorado correspondents?

A. Mainly clearance of checks.

Q. And do you, to your knowledge, do most of the clearing of checks for these banks?

A. No, sir.

Q. Do you know who does?

A. I would assume that they would have other city banks to handle the majority of their——

Q. And why not, to your knowledge, do you not do the majority of their check clearing?

MR. WILLIAMSON: Objection, Your Honor. This is an assumption. The last was an assumption, but now he is making an assumption based on an assumption.

THE COURT: Overruled.

Q. I am asking the witness why, to your knowledge do you not do the majority of the clearing of their checks?

A. Probably because it would take too much time for our facility.

MR. WILLIAMSON: Objection. Move the answer be stricken. He didn't give the source of his knowledge. He [530] said "probably," indicating he is making an assumption.

MR. MALASKY: Could you repeat the last answer?

(The reporter read the previous answer aloud.)

Q. And could you amplify on that answer?

A. Because the majority of checks that would be cleared for those banks would probably be drawn on banks other than in our immediate area in Durango. Consequently, we would have to transfer or forward the check on to the paying or clearing agency or paying bank, and hence we would have probably a day or maybe two days' lapse.

Q. Well, do you happen to know who those banks use for the clearing of their—primary clearing of their checks?

A. I believe both of them use banks in Denver.

Q. Mr. Allen, how far is Denver from Durango?

A. About 380 miles.

Q. And how far is Albuquerque, New Mexico, from Durango?

A. About 225.

Q. And how far is Salt Lake City, Utah, from Durango?

A. About 476.

Q. And how far is Phoenix, Arizona, from Durango?

A. About 500.

Q. Who is your bank's primary correspondent?

[531] A. The Central Bank and Trust Company of Denver.

Q. And do you have any other correspondents in the state of Colorado?

A. Yes, sir.

Q. And where are they located?

A. In Denver.

Q. Who are they?

A. First National Bank of Denver and United Bank of Denver.

Q. Now, Mr. Allen, in your opinion, could the Burns National Bank of Durango do without a Denver correspondent?

MR. WILLIAMSON: Objection, Your Honor; calls for speculation.

THE COURT: Overruled. Can you answer the question?

A. No, sir.

THE COURT: Well, that takes care of that.

Q. I am sorry, did you say that you could not answer my question?

A. No. That was the answer to your question, I believe.

Q. My question was, could you do without a Denver correspondent.

A. My answer is no, sir.

Q. Could you explain why you could not do without a Denver correspondent?

[532] A. Well, we feel that we must have a correspondent in Denver because the economy and the government, about everything that we would be concerned with, is centralized around Denver.

Q. Does it have anything to do with the fact that you are a Colorado bank?

MR. WILLIAMSON: Objection, leading.

Q. Would you state whether or not in your opinion the fact that you are located in Colorado has anything to do with your testimony that you need a Denver correspondent.

A. Yes, we need it for a number of reasons.

Q. Could you elaborate on some of those?

A. Well, one of them would be for the pledging of funds.

Q. What type of——

A. Pleading stock, securities that we may purchase, which are—which we pledge in escrow in our correspondent bank in Denver for guaranty to public depositors, our depositors of public funds.

Q. By depositors of public funds, would you explain who you mean?

A. Yes, for instance, the County Treasurer or any school districts or any other public funds, we must pledge any amount over the $20,000 that is covered by the Federal Deposit Insurance Corporation. We must pledge securities, [533] usually in the amount of 110 percent of the account, and those securities must be in the form of government securities and we put those in our correspondent bank in safekeeping pledged for that deposit.

Q. Now, Mr. Allen, what correspondent banks does the Burns National Bank have outside of the state of Colorado?

A. We have the Chase Manhattan in New York, Albuquerque National in Albuquerque, Bank of California in San Francisco, First National Bank and Trust Company of Lincoln, Nebraska, City National Bank in Kansas City.

Q. You have a correspondent in Houston?

A. Bank of the Southwest in Houston.

Q. Dallas?

A. Republic National Bank of Dallas.

Q. Do you have any other correspondents that you use?

A. I think that's most of them.

Q. Now, Mr. Allen, for what purpose do you use the Bank of California?

A. We clear most of our items going to the West Coast.

Q. Anything else?

A. That's it primarily.

Q. Well, is there anything else or——

MR. WILLIAMSON: I object, Your Honor.
MR. MALASKY: All right.

[534] Q. How about Chase Manhattan? What do you use them for?

A. Primarily Chase Manhattan we use for transfers of currency to foreign countries for our depositors.

Q. Where is Chase Manhattan Bank?

A. One Chase Manhattan Plaza in New York.

Q. I am sorry I interrupted you. Is there anything else you use Chase Manhattan for?

A. We use them for remitting on our American Express Travelers Checks and our travelers checks that we sell for First National City Bank of New York.

Q. Where is Manufacturers Hanover located?

A. That's in New York.

Q. And what do you use Manufacturers Hanover for?

A. The clearance of special items on a direct basis and also for transfers of foreign exchange because they do have branches in some foreign countries that Chase Manhattan does not.

Q. Are those the only purposes for which you use the Manufacturers Hanover Bank?

A. That's about the only purpose.

Q. What do you use the First National Bank and Trust of Lincoln, Nebraska, for?

A. For the clearance of special items and also they—we sell federal funds through First National of Lincoln.

[535] Q. And how about the Bank of the Southwest in Houston?

A. That's mainly on drafts for oil leases and sometimes special items.

Q. How about Republic National Bank in Dallas?

A. Same thing in Dallas.

Q. How about Albuquerque National Bank? What do you use them for?

A. The clearance of special items, and also they do help us with references, and we also use them for other advice, especially from a legal standpoint as to the laws of New Mexico.

[536] Q. How about City National in Kansas City?

A. City National of Kansas City, clearance of special items and also for the transfer of funds for the sale of livestock in the stock yards there which are transferred to

our account for the benefit of our depositor. Also we carry the account of Sears Roebuck of Durango and their main correspondent is our area is the City National.

Q. Now, Mr. Allen, could you substitute the Lincoln, Nebraska correspondent for the services which you now get from the Albuquerque National Bank?

A. I do not think we could, no.

Q. How about your New York correspondents?

A. No.

Q. How about your Dallas correspondents?

A. No.

Q. Why couldn't you substitute a correspondent in Dallas for a correspondent in New York or a correspondent in Kansas City?

A. Well, specifically, we feel that as an example we can issue a draft on our account with Chase Manhattan Bank in New York in payment of travelers checks that are sold and as soon as they get the draft they can clear it, whereas if we issued a draft on our account in Dallas it would take a longer time for them to clear their draft of that remittance.

Q. In your opinion, do you need a correspondent in each [537] of these cities for particular purposes relating to those cities?

A. I think so, yes, sir.

Q. Now, how do you pay for all these correspondent services which you obtain from these various banks?

A. We pay by reference of customers to that bank or to friends of our customers in that area, but mainly through deposits of our—in our account for our credit.

Q. And what type of deposits? What form do these deposits take?

A. They are in the form of accounts, demand accounts.

Q. Demand accounts?

A. Bank demand accounts.

Q. Now, Mr. Allen, you stated that your primary correspondent is Central Bank and Trust Company in Denver, but that you also I believe stated you have the United Bank of Denver and the First National of Denver as correspondents, is that correct?

A. Yes, sir.

Q. Could you please tell us what you use United for?

A. Mainly United Bank is used for the clearance of our Master Charge remittances. We are under their—they are one of the members of the Mountain States Bank Card

Association and we clear our Master Charge through the United Bank.

Q. And how about the First National Bank of Denver, what do you use them for?

[538] A. First National Bank of Denver for many years has been the main depository of our J. C. Penney Company store and me have handled remittances for the transfer of their money directly to their account at First National Bank of Denver.

Q. Now, could you explain in a little bit more detail just what your prime correspondent, the Central Bank and Trust Company here in Denver, does for you?

A. Well, for the last year and a half they have been kind enough to sell federal funds for us on a daily basis, which allows a small bank such as ours to draw daily interest on any extra cash we may have on hand. They have participated in loans, overrides, loans which are too big for our bank to carry. They have referred demand and loan accounts to us over the years. They have given us advice and help in banking problems. They have purchased securities for us on the market. They hold securities of our portfolio in the safekeeping vault. They have acted as an escrow agent for our securities, which have been pledged as I said a while ago as a guarantee for public funds. They have been quite lenient on legal advice that we may have called upon them for and they have been from a personal standpoint very kind to our customers and clients they have referred to us and that we have likewise referred to them, and I feel that they can't be—they have also furnished us with copies of the state banking code at various [539] times and other publications and I feel that we need a correspondent in Denver.

[540] Q. Would you think that the services which the Central Bank and Trust Company provides to your bank constitute a full range package of correspondent banking services?

A. I feel they do.

Q. And you mentioned that they are the safekeeper for the security which you deposit as collateral for state or municipal funds deposited in your bank. To your knowledge, Mr. Allen, could you use a bank in Albuquerque for this purpose?

A. No.

Q. Would you state why?

A. Because we are requested to use Colorado banks.

Q. You are requested? Do you know if you are required to use——

A. In certain cases we're required.

Q. Now, in your opinion could any of the banks—the other banks which you correspond with outside the state of Colorado do all the things for you that Central does for you?

A. No, they can't.

Q. And in your opinion, Mr. Allen, based upon your 25 years of banking experience in Colorado, could any bank in Colorado, but outside of Denver, presently furnish to you the full range of correspondent services you now get from Central?

[541] A. Not to my knowledge, no, sir.

Q. Is it your opinion that any other Denver banks could furnish these services to you?

A. I believe they could.

Q. And could you state which Denver banks in your opinion would adequately substitute for Central if you had to make a switch?

A. First National Bank of Denver, United Bank of Denver, Colorado National, American National, and possibly the Security National.

Q. Now, Mr. Allen, you stated that Albuquerque, New Mexico, is only 225 miles from Durango, while Denver is 380 miles from you, but, yet, you still maintain your prime correspondent in Denver. Why do you use Denver instead of Albuquerque?

A. I think one of the main reasons is because naturally our Denver correspondent is more familiar with the banking laws of Colorado. And at times we have to seek their help and advice. Whereas, the banks in Albuquerque would not be versed to the point that our correspondent in Denver would be; also for the clearance of checks. We make the—we have the majority of our checks going east, and of course a lot are drawn on banks in this part of Colorado, and certainly we would have faster clearance.

Q. Do you consider the Federal Reserve Branch in [542] Denver as an adequate substitute for the full range of correspondent services which you state that Central now provides you?

A. No, sir.

Q. Could you state why not?

A. One of the reasons—the Federal Reserve Bank is a bank's bank, and certainly they are not going to be—they're not going to treat a correspondent or country bank on the same plane that a private-owned bank would. And naturally it would be impossible for the Federal Reserve Bank to refer customers to us, for instance. And, a lot of services that we get from our correspondent bank. And I don't think it would be ethical for the Federal Reserve Board to extend such services.

* * * * *

[547] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF.
vs.
FIRST NATIONAL BANCORPORATION AND FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

Proceedings before the HONORABLE WILLIAM E. DOYLE, Judge, Presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Thursday, May 6, 1971.

APPEARANCES:
(As heretofore noted.)

[548] THE COURT: Mr. Allen, will you come forward, please.

The oath has already been administered to you so just resume the witness chair and we can take up your cross-examination.

CROSS-EXAMINATION

By MR. METZGER:

Q. Mr. Allen, did we have breakfast this morning?
A. Yes, sir.
Q. And at that time did I ask you what your response to certain questions would be and was your response that I would hear them when you were on the witness stand?
A. Yes, sir.
Q. And at that time, sir, did I say to you that in the search for truth, that is a trial, that witnesses should be exposed to the facts presented by both sides before they make their judgments?
A. Yes, sir.
Q. And that your response was you were not interested in any of my facts, quote unquote?
A. I don't remember saying that, no, sir.

Q. Do you deny that you said it?

[549] A. I don't know exactly what words I used, sir. I said I didn't have to.

Q. And that you were not interested in what my facts were?

A. I don't remember saying "not interested."

Q. That you didn't care to hear my facts? Is that closer for you?

A. I said I would on the witness stand. I intimated I would on the witness stand.

Q. Were we alone at breakfast?

A. No, sir.

Q. Someone else was with us?

A. Yes, sir.

Q. Mr. Hogue was with us?

A. Yes, sir.

Q. If Mr. Hogue told you that was what you said, would you concede that was what you said on that point?

A. I would.

MR. METZGERS Thank you. No further questions.

REDIRECT EXAMINATION

By MR. MALASKY:

Q. Mr. Allen, did I at any time ever state to you that you should not speak to counsel?

MR. METZGER: Objection, Your Honor. I have made no intimations about counsel or counsel's ethics.

[550] MR. MALASKY: Okay. No further qustions.

THE COURT: All right. Then you will be excused from further attendance at this trial. You may leave.

(Witness excused.)

MR. MALASKY: May it please the Court, Your Honor, the government calls Mr. Donald Winter.

DONALD W. WINTER,

a witness called by and on behalf of plaintiff, having first been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By MR. MALASKY:

THE COURT: Give us your full name, address and occupation.

THE WITNESS: My name is Donald W. Winter. I reside at 2194 Donnellon, Burlington, Colorado. I am presently president of the First National Bank at Burlington.

Q. (By Mr. Malasky) Mr. Winter, how long have you been president of the First National Bank of Burlington?

A. Slightly over three years.

Q. And when was your bank founded?

A. October 1963.

Q. And do you know when your bank became profitable?

A. I believe during the middle of the year 1965.

Q. Now, Mr. Winter, are you familiar with the term correspondent banking?

[551] A. Yes.

Q. And could you describe for the Court what correspondent banking means to you as a banker?

A. Correspondent banking to me would mean a small bank such as ours having a personal and close relationship with a large bank such as ours, the United Bank of Denver, whereby we would carry substantial demand deposits with them and in turn we would be provided a full range of services by that bank.

Q. Now, is there a full range of correspondent services available to your bank from any source other than another commercial bank?

A. I would say no.

Q. Now, in your opinion, Mr. Winter, is correspondent banking a distinct and well recognized aspect of the banking business?

A. Yes, sir.

Q. Can you state why it is such?

A. I don't believe a bank like ours could exist without a correspondent bank relationship. We have other sources such as the Fed. but we do have to have the large correspondent banks.

[552] Q. Well, can the Fed provide all the services which you need as a banker?

A. No, I don't think so.

Q. Can you state why not?

A. Overline loans would be one example that they could not provide the service that we need.

Q. By the Fed, you mean——

A. Federal Reserve Bank.

Q. Federal Reserve Bank. Now, where is Burlington located, Mr. Winter?

A. Approximately 170 miles straight east of Denver, 12 miles this side of the Kansas border.

Q. I see, and what is the closest city to Burlington besides Denver?

A. I think Wichita, Kansas. I'm not positive of it.

Q. Do you know how far Wichita, Kansas, is from Burlington?

A. Approximately 375 miles.

Q. Now, Mr. Winter, what banks does the First National Bank of Burlington use for correspondent services?

A. We use the United Bank of Denver, the Union National Bank of Wichita, Kansas, the Omaha National Bank of Omaha, Nebraska, and Kit Carson State Bank, Kit Carson, Colorado.

Q. Why do you use Kit Carson Bank?

[553] A. Because of common ownership.

Q. Now, Mr. Winter, could you tell the Court what the Omaha National Bank does for you?

A. The Omaha National provides us with overline loans and a few Fed fund purchases, Federal fund purchases. I believe that's all we use them for.

Q. Do you use them for any security safekeeping?

A. No.

Q. Why is that?

A. Because of the inconvenience mainly, the distance and the time involved in our mail service.

Q. I see. What does the Union National Bank in Wichita do for you?

A. They handle one overline loan and that is all we have ever used them for.

Q. Anything else?

A. No, sir.

Q. Now, do you think that the Union National Bank of Wichita would provide other services to you?

A. Yes.

Q. Would you use them?

A. No.

Q. Could you explain why or why not?

A. Because of the inconvenience and the mail service. Our mail from Burlington goes to Denver. If we send to [554] Wichita, Kansas, our mail goes to Denver and then to Wichita. If we send to Omaha, it goes to Denver and then to Omaha.

Q. Do you have a primary correspondent?

A. Yes.

Q. Who is that?

A. United Bank of Denver.

Q. Could you describe in some detail what United Bank of Denver does for you?

A. They provide us with our check clearings, our overline loans. They purchase participations in our overline loans. They sell us participations if we want them in their loans. They escrow our securities for the state, county and city deposits. They purchase and sell securities for our own account. They handle Fed fund purchases and sales for us. They provide legal advice, if we want it, and many personal services, and I am sure many more that I can't think of offhand.

Q. Would you describe the services that you receive from United Bank of Denver as a full range of correspondent services?

A. Yes.

Q. Now, you mentioned that you have state funds deposited in your bank, I believe. Is that correct?

A. Yes.

[555] Q. And must you post collateral for such deposits?

A. Yes.

Q. And could you describe the requirements or what you must do in securing state deposits?

A. We must pledge government securities. I'm not sure that it has to be government securities, but we always do. We pledge 110 percent of the amount of the deposit and these are held in escrow at the United Bank of Denver.

Q. Now, could you state whether or not to your knowledge you are required by law to post those securities in a Colorado bank?

A. Yes, we are.

Q. Mr. Winter, have you ever given any thought to the establishment of a new bank charter since you have become President of the First National Bank of Burlington?

A. Yes.

Q. Did you take any action to follow up on these thoughts?

A. A little. We started to fill out an application. We inquired about a bank stock loan, and that's about as far as we went.

Q. And where did you inquire about a bank stock loan?

A. At the United Bank of Denver.

Q. Now, how do you pay for the correspondent services which you obtain from these various banks?

[556] A. Through balances.

Q. Is this the primary way that you pay for them.

A. Yes.

Q. Or is there any other way that you pay for these services?

A. No.

Q. Are there some services that you pay cash for?

A. We do have one service that is a contract service. We have a data line computer on our demand deposits.

Q. With——

A. With United Bank Denver. This is on a contract basis, though, and we pay for this service.

Q. Now, Mr. Winter, if for some reason you were to become dissatisfied with the services that you were receiving from the United Bank of Denver, where would you look for a replacement?

A. Probably with another bank in Denver.

Mr. Malasky: Just for the record, I am handed a note that I asked him, "since you have become President of First National Bank of Denver." I think I meant to say First National Bank of Burlington.

Q. Do you know what the total of your correspondent balances are in other banks?

A. Roughly—in other banks other than United Bank?

Q. No, in total.

[557] A. Approximately a half a million dollars, excluding the Federal Reserve Bank.

Q. And would you state about what percentage of that is in your Denver correspondent?

A. Approximately 80 percent.

Q. Now, have any other banks solicited you for correspondent business?

A. Yes.

Q. And could you state who these banks were?

A. Formally we have been approached by the Security National here in Denver, informally by Central Bank and Trust, Commerce Bank of Kansas City, and the First National of Kansas City.

Q. Now, what banks do you consider as an alternative or substitute for the full range of services which you require?

A. Right now I would consider the First National of Denver or Central Bank and Trust Company of Denver.

Q. How about Colorado National or American here in Denver?

A. I am sure they would do the job, although I don't know anyone personally in those banks.

Q. How about Security National?

A. I assume so, but I am not sure. We handle lots of agricultural loans and I don't know whether Security [558] National handles ag loans.

MR. MALASKY: I have no further questions. Your witness.

CROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. Winter, just as a preliminary question, are your Fed funds paid for by the—out of the account that you maintain at the correspondent bank, in this case, United?

A. Yes, sir.

Q. Or are they paid for on a basis where the correspondent bank takes one-eighth as their charge for this service?

A. I am told they do not take a charge. I can't swear to this, but they say they do not take a charge.

Q. Would you be surprised if you learned that they did take a charge?

A. No.

Q. Mr. Winter, isn't it true that each one of these correspondent services that you directed your direct testimony to, such as check clearing, overlines, escrow, securities purchases, and sales, Fed funds, legal advice and, quote, personal services, unquote, can be obtained separately?

A. Yes, sir, I am sure they can.

[559] Q. Would you consider it a good business practice to seek the best supplier of each of these items on the basis of quality and service provided?

A. No, I would not.

Q. Do you mean to say, then, that if you would be able to find that one other organization would be able to provide you with escrow services better and cheaper than you now have with United you would disdain to use that service?

A. No, I would say we would not use that service. My point was that a small bank such as ours cannot pay for all these services through several different banks.

Q. May I qualify my question by saying that the pay-

ment, of course, would be proportional to the service received. I think that is an assumption that everyone can make. You wouldn't necessarily have to keep a half million dollars on balance just to pay for escrow accounts. May I qualify the question by saying, assuming the price is competitive and the service is better, would you think that it would be a good business practice to seek the best price and best service for each of these items?

A. Yes.

Q. Wouldn't it be possible to do so—Let me continue that question by saying—You say you do your check clearing with United?

A. Right.

[560] Q. Is it possible to clear your checks through the Fed.?

A. Yes.

Q. If the Fed. were able to provide you with better services in a shorter period of time at a lower correspondent balance or a lower cost, would you think it would be a good business practice to clear your checks with the Fed.?

A. Yes.

Q. Let's take overlines. Is it possible to obtain overlines from a bank other than United?

A. Yes, I'm sure it is.

Q. Indeed you do obtain some overlines from other banks?

A. Yes.

Q. Do banks with relative frequency solicit such business from you?

A. I would not say with frequency. In the last three years probably three or four times.

Q. Since you can as you testified obtain these overline services from other banks than United, would you think it would be a good business practice to obtain these services from the bank that would give you the most quick service on obtaining overlines with as minimum paperwork as possible; with as little correspondent balance possible; and with the best service to your customer who is the real beneficiary of this service, isn't that a fact?

[561] A. Yes, sir.

Q. This service could be performed by virtually any large bank west of the Mississippi, indeed, couldn't it?

A. Could be, but would not be feasible for us.

Q. When you say not feasible, you're speaking as a

matter of convenience. But, it could be performed, isn't that correct?

A. Could be, yes.

Q. But if the convenience factor were balanced with the factor of price and service and indeed price and service outweigh the slight disadvantage of convenience, wouldn't you say that it would be possible if not desirable to do your business in overlines with that bank?

A. No, because——

Q. Now, I made an assumption, sir. Assuming the convenience was outweighed by the price and quality of the service.

A. I can't assume that the convenience would be outweighed.

Q. I ask you to assume it.

A. Yes, if I have to assume that.

Q. Federal funds for example—you say United sells Federal funds for you?

A. Correct.

Q. Is this something that would require simply a [562] telephone call to Omaha to have exactly the same service performed?

A. Yes.

Q. The convenience factor in that case would be minimal?

A. Correct.

Q. Legal advice—I assume there are lawyers in Burlington from where you could obtain legal advice, is that correct?

A. Yes——

Q. Or lawyers in Denver?

A. Correct. This is where we would go, would be to Denver.

Q. Personal services—I'm not quite clear what personal services are. Would this simply be things like purchasing tickets to entertainment events, or something of that sort?

A. This would be included in it. It would also include in personal services many things—tickets, as you mentioned.

Q. But this is the general drift?

A. Referring customers to us and a multitude of services.

Q. All of which tickets, for example, you can get elsewhere?

A. Yes, no doubt about it.

Q. Securities purchases and sales—are you referring [563] to municipal bonds?

A. Yes.

Q. Is it possible to obtain municipal bonds from municipal bond dealers who are not banks in Denver?

A. Yes.

Q. Isn't it true many banks do obtain their municipal bonds from these bond dealers?

A. Yes.

Q. Escrow—you said—I withdraw that.

I believe you said that United holds collateral for you for state deposits?

A. Yes.

Q. And holds them in escrow. I believe you did say that this is required to be done in a Colorado bank.

A. Or the Federal Reserve Bank.

Q. Or the Federal Reserve Bank. So the Federal Reserve Bank is a competitor of United in this service?

A. Yes.

Q. Are not all relatively large Colorado banks also competitors of Denver for this service since they are in Colorado? Speaking only with regard to this service, now, sir.

A. Yes.

Q. And if they would provide equal or better quality service as—at equal or lower price would they not be considered as a competitor—an important competitor in this [564] market?

A. I would assume so, yes.

Q. Data processing, you mentioned in somewhat of a different category. I take it you do not consider this a correspondent service since it is paid for on a contract basis?

A. That's correct.

Q. Are you aware of the fact, Mr. Winter, there are many out of state municipal bond dealers that have tie-lines into Colorado, for example, Memphis, Chicago, San Francisco, New York City, Newark, New Jersey, and literally any aggressive bond dealer in the United States from whom these bond purchases and sales would be available on just as convenient terms as this telephone call to Omaha that I mentioned before?

A. Am I aware of that?

Q. Are you aware of that?

A. Yes, I'm aware of it, although if I may add, our Colorado Bankers Association has warned us not to use these dealers.

Q. Oh, they have?

A. Yes. And we receive five or six telephones calls a week from these dealers in Memphis especially.

Q. But they are soliciting your business?

A. Definitely.

Q. And it is possible that if this warning had not been issued some Colorado bankers may have availed themselves [565] of this?

A. I would assume so.

Q. You said you correspond with a bank called the Kit Carson Bank?

A. Yes.

Q. Is this correspondent relationship related to the purchase and sales of loans?

A. Yes.

Q. What you would normally call overlines or participations?

A. Yes.

Q. To this extent then Kit Carson Bank is a competitor of United, is it not?

A. Correct.

Q. Are you aware, sir, that since you are a national bank, the Federal Reserve provides a cost accounting service?

A. No, I'm not aware of that.

Q. Would you be surprised to learn that the Federal Reserve does provide a cost accounting service to smaller member banks?

A. No.

Q. Would you consider this a service that you might well avail yourself of?

A. Yes.

Q. Isn't it a fact that in view of the above facts [566] that we have brought out that this acquisition, the acquisition at issue here at this trial of the First Naional Bank of Greeley by the First National Bancorporation does not affect your freedom to obtain any of those correspondent services anywhere?

A. Right now I would say it does not affect us.

Q. This acquisition at this time? That's the question.

A. At this time, no.

Q. May I go back for one second to the escrow services that the United Bank performs for you and which I believe —if I recall correctly you said could be performed just as well at the Fed.

A. I would assume so, yes.

Q. If I did not make that clear, I just wish to get that on the record. I wish to further clarify my original question by making clear that I was referring to the public funds that are on deposit with your bank for which you have put up certain securities as deposit in escrow in a Colorado organization or with the Fed.

A. Yes.

Q. And that is a fact?

A. Yes.

Q. So the Fed is a competitor with any other bank in Colorado for that service?

A. (Nods affirmatively.)

[567] MR. SCHWARZ: No further questions, Your Honor.

REDIRECT EXAMINATION

By MR. MALASKY:

Q. Just a few questions, Mr. Winters. Would it be a good business practice to have numerous correspondents simply because for various items they were individually cheaper?

A. No.

Q. You stated that you pay for most of these correspondent services by maintaing balances. Now, do you consider the balances which you keep in your correspondent as giving you access to all or nearly all of the services which your correspondent provides?

A. Yes.

Q. Now, to your knowledge—Withdraw that, please.

How often are you in the federal funds market? How often do you buy and sell federal funds?

A. Daily.

Q. Would it be as convenient for you to make a call to Omaha as it would to deal with your Denver correspondent?

A. No. There would not be a great lot of difference, but it's a little more inconvenient with Omaha or someone else.

Q. Would it be less expensive to call Denver?

A. Yes.

Q. Would it be less expensive to call Denver than it [568] would to call New York?

A. Yes.

Q. Or Memphis?

A. Yes.

Q. Or Albuquerque?

A. Yes.

Q. Or Los Angeles?

A. Yes.

Q. Would you use the Kit Carson bank as a correspondent but for the fact that there is common ownership between you?

A. No.

Q. And in your opinion, Mr. Winters, can any bank elsewhere outside of Denver provide you as a package or cluster the services which you obtain from your Denver correspondent?

A. Not to my knowledge, no.

MR. MALASKY: Thank you. I have no further questions.

RECROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. Winters, you said it's more expensive to call Memphis than Denver.

A. I assume it is, yes.

Q. Could you call the bond dealer collect?

A. Probably.

MR. SCHWARZ: No further questions.

THE COURT: I believe that's all. You may be [569] excused.

(Witness excused.)

MR. LIPKOWITZ: Plaintiff calls Walter McKinstry.

WALTER McKINSTRY,

a witness called by and on behalf of plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. LIPKOWITZ:

[570] THE COURT: Give us your name, address and occupation.

THE WITNESS: My name is Walter R. McKinstry. I live at 300 West Eighth Street in Julesburg, Colorado. I am President of the First National Bank of Julesburg, among other things.

DIRECT EXAMINATION

By MR. LIPKOWITZ:

Q. Mr. McKinstry, are you here under subpoena?

A. Yes, sir.

Q. Mr. McKinistry, how long have you been President of the First National Bank of Julesburg?

A. More than 30 years.

Q. How long have you been in the banking business?

A. More than 50 years.

Q. Among the other things that you just referred to, were you at one point Chairman of the State Welfare Board?

A. Yes, sir.

Q. Could you tell us just how far Julesburg is from Denver?

A. 182 miles.

Q. And how far is it from the Nebraska border?

A. Half a mile to the north and a mile to the east, right in the corner.

Q. Over your 50 years of banking experience, have [571] you become familiar with what is known as correspondent banking?

A. I have lived with it.

Q. Could you just tell the Court what correspondent banking is?

A. Well, that would take too much time. I think you have had it here before, but correspondent banking to me is that we must have a correspondent bank for a small bank in order to clear checks for us, to escrow bonds for public funds deposited with us, for the securing of credit information for us for our customers from perhaps anywhere in the United States, just a multitude of things, including even personal relationships. I even get into the dog breeding business with officers of the United Bank of Denver, so there isn't any limit to my relationship with the correspondent bank.

Q. I see. Could you tell us who your correspondent banks are?

A. Primarily the United Bank of Denver, First National Bank of Denver, Colorado National Bank of Denver, Omaha National Bank, Omaha, Nebraska, Commerce Trust Company—Corporation—Commerce Trust Company, that's right, Kansas City, Missouri, Chemical National of New York City.

Q. I see, and could you tell us what you use Omaha National for?

[572] A. We use Omaha National to clear our eastern checks and carry some overline on cattle paper.

Q. I see.

A. They are a strong cattle-paper-carrying bank.

Q. I see, and could you tell us what you use the Commerce Trust Company of Kansas City for?

A. Very little. We have some wheat drafts. They load wheat into cars and then the elevator draws a draft and some of that is shipped to Kansas City, so we use a correspondent in Kansas City for that purpose.

Q. You mentioned—is that Chemical of—

A. Chemical National Bank and Trust Company of New York City. We have a little bit of overseas business. We have customers who want some accommodations in New York and it gives us a personal relationship there for New York City.

Q. Now, would you tell us whether you have any one bank that you consider to be your primary correspondent?

A. Yes, United Bank of Denver.

Q. Why do you consider United to be your primary correspondent?

A. Because we keep more of our money there than we do any other bank in Denver.

Q. What do you obtain for keeping this money there?

A. Oh, they do a multitude of services for us. They [573] secure credit information for us when we need it for our customers. They escrow bonds.

Q. Are these the municipal bonds?

A. Municipal bonds and Colorado bonds, and, as you know, you can only post Colorado bonds and Federal bonds for these public deposits. Then—what's your question again, sir?

Q. What other services do they provide you?

A. Well, there are so many I can't just tell you off the cuff. They safekeep from a million to two million of bonds

for our bank or our customers. They carry overline loans for us when we request them. They supply us all the services of their trust department for our bank and our bank's officers and our customers. They assist us in—for instance, just recently we had a million-dollar HUD project for Julesburg, and without this correspondent service we could not have secured this project.

Q. I see.

A. And that's one of the big things that the bank can do for you, and then the personal errands. You can call up and get them to make reservations for me with the hotels here in town when it is pretty tight and they can secure airline tickets for me, sometimes get show tickets for us or our customers, and, as I say, it sort of even gets into a personal relationship, and then when we buy bonds here [574] from dealers we have these bonds delivered to the United Bank and they accept them for us and safekeep them and they assist us in a lot of ways with government offices here in Denver. All of the Colorado offices are here in Denver, State Highway Department and State Land Board and many others that we need in our business. They assist us there.

Q. Do you have to come down and see these people?

A. Quite often. I am in the bank there once a month and many times twice a month.

Q. And do they let you use some of their office space as a place to meet people here in Denver?

A. Yes, many times. We have customers right here in Denver who still do much business with us and they like to meet with me sometimes and so we are furnished an office in the bank for our conference.

Q. And you find it necessary then to have a Denver correspondent?

A. We would be lost without one.

Q. And——

A. We have to have one.

Q. Could you substitute any other correspondent elsewhere in Colorado for a Denver correspondent?

A. No, we couldn't because all the bonding houses that we deal with and the government offices that we deal with—this is the center of our economic and social life, [575] Denver.

MR. LIPKOWITZ: Okay, thank you. That's all.

CROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. McKinstry, as I heard your direct testimony, you indicated you used the United Bank of Denver for some trust services?

A. Yes.

Q. Do they charge you separately besides your correspondent balance?

A. They do not.

Q. Oh, before I go on, you mentioned that you utilized a room over at the United Bank of Denver to meet with people and customers. Is it possible that the Brown Palace might be a competitor with United for this service?

A. Well, if I took them over to the Brown Palace, it would cost me $26.

Q. But they are a competitor, nevertheless?

A. I couldn't answer that.

Q. How much money do you keep on deposit with United?

A. Anywhere from three hundred fifty to six hundred thousand dollars. That entitles us to a lot of service.

Q. Including room?

A. Occasionally. Not hotel rooms, just conference rooms.

[576] Q. You mentioned that you send your bonds over to United after they are purchased.

A. For instance, we buy bonds from Boettcher, we ask Boettcher to deliver them to the United.

Q. Could United purchase them for you?

A. They do purchase bonds for us. We don't give all our—all our business isn't done there from bonds. Sometimes there is better offerings from one of these houses than there is from the bank.

Q. In other words, some of these houses are better competitors than——

A. At times. At times.

Q. You mentioned that United keeps escrow funds for public deposits.

A. Public funds.

Q. Is it possible to obtain the same service from the Fed?

A. Not that I know of. I don't know that. The Fed is a bank's bank, not—not for individual banks.

MR. SCHWARZ: May I have one moment, Your Honor?

THE COURT: Sure.

(Counsel conferred.)

Q. Mr. McKinstry, is it true that the First National Bank of Denver maintains your bank's profit in profit sharing?

A. Profit-sharing trust fund. We also carry a [577] fair-sized account there.

THE COURT: Beg your pardon?

THE WITNESS: We also carry a fair-sized account there, Judge.

Q. Isn't it true that you mentioned to me when I spoke to you that they also kept safekeeping for some of your bonds?

A. Yes, they do.

Q. Does First National charge you separately for the services performed with regard to your profit-sharing and pension plan?

A. Yes, they do.

Q. You mentioned you participate in loans in both Omaha and Denver, is that correct?

A. That's correct.

Q. Are there any other cities where you participate in loans?

A. No, sir.

Q. Do bankers from other cities solicit your business with regard to loan participations?

A. Not recently.

Q. But they have?

A. They have, years ago.

Q. Mr. McKinstry, do you recall back to 1963 when branch banking was an issue in this state?

[578] A. I surely do.

Q. What was your position on that?

MR. LIPKOWITZ: Objection, we are not really discussing branch banking in this case. It is outside of the scope of the direct.

THE COURT: We will permit him to answer. Go ahead.

A. What was my position?

Q. Yes, sir.

A. I didn't take an active position, but my feelings were that I was against it.

MR. SCHWARZ: Thank you. No further questions.

THE COURT: Did you have anything further?

MR. LIPKOWITZ: One last question.

REDIRECT EXAMINATION

By MR. LIPKOWITZ:

Q. Are there any other institutions, financial or otherwise, from which you can obtain the full package of services that you obtain from your correspondent in Denver?

A. Well, it is possible, but not very probable. After you have 40 years of association, you build up your reputation, your record, anything you want you get. I don't know how you could transfer it to a new bank and get that.

Q. Are there any other organizations besides banks that offer the full range of services?

[579] A. No, sir.

MR. LIPKOWITZ: Thank you, Mr. McKinstry.

THE COURT: Yes, you may be excused. Thank you very much.

THE WITNESS: Thank you, sir.

MR. MALASKY: Your Honor, the next witness will take a little bit of time. I don't know whether you wanted me to proceed at this time.

THE COURT: Yes.

MR. MALASKY: The Government calls Mr. Charles Smukler.

CHARLES H. SMUKLER,

caled as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: State your full name, address and occupation, please.

THE WITNESS: Charles H. Smukler, S-m-u-k-l-e-r, 6707 South Jackson Court, Littleton. I am President of the Security National Bank, Denver.

DIRECT EXAMINATION

By MR. MALASKY:

Q. How long have you been President of Security National Bank in Denver?

A. About a year and a half.

Q. Would you tell us of your prior employment before [580] you became president?

A. I started in banking in about 1950 at the then United States National Bank, worked there until about 1953, when

I went to the First National Bank of Englewood, and was at the First National Bank of Englewood in various capacities until 1963, when we organized the Security National Bank, opened that bank, and in June of 1964 had an opportunity to purchase along with other people a small bank in the suburbs of Denver. I was president of that bank until May of 1969, at which time I came back to the Security National Bank and have been there ever since.

Q. Is the Security National Bank part of a holding company?

A. Yes, it is part of First Colorado Bankshares.

Q. Mr. Smukler, are you familiar with the term in banking known as correspondent banking?

A. Yes, sir.

Q. Could you describe what correspondent banking is?

A. It is a group of services which can be offered by one bank to other banks that might require those services.

Q. And is your bank, Security National, presently in the business of providing correspondent banking services to other banks?

A. Yes, sir.

Q. And how long has your bank been engaged in the [581] correspondent banking business?

A. Approximately since June of 1964.

Q. And has your bank always been an active correspondent bank since that time?

A. No, it has not been.

Q. When did it become an active correspondent bank?

A. Well, we really—we are really not what would be considered an active correspondent bank, although we intend to be an active correspondent bank.

Q. Does your bank have people active in correspondent banking?

A. Yes, sir, we do.

Q. And how many people are involved in correspondent banking?

A. Four people.

Q. Does that include you?

A. Yes, sir.

Q. Now, Mr. Smukler, does your bank solicit customers for the correspondent services which you offer?

A. Yes, sir.

Q. And what type of customers are these?

A. They are other banks.

Q. And why do these banks seek correspondent services from you?

A. Well, they either have needs—customer needs [582] or they have internal needs of their own that they are not able to satisfy within their own capabilities.

Q. Could you describe what services the Security National Bank offers to other banks when you solicit them as a customer for your correspondent department?

A. Yes, sir, I think what we offer would be considered a full range or package of correspondent banking services that would include electronic data processing and loan participations, safekeeping, purchase and sale of Fed funds, the providing of currency and coin to correspondents on request, all of the items that have been talked about, all of the services talked about in testimony heretofore.

Q. Do you provide credit information?

A. No, we do not. Well, let me put it this way: With the new Fair Credit Reporting Act, we don't know whether we are or not. At the moment, we are not.

Q. Do you aid other banks in the recruitment of personnel and training of personnel?

A. Yes, sir, on request we do.

Q. How about check clearing?

A. No, that's done through our affiliate, First National Bank of Englewood, at the present time.

Q. Does the Security National Bank intend to take on check clearing?

A. If we are successful in our correspondent banking [583] endeavor, we do, yes.

Q. Does Security National Bank aid in the establishment of new banks?

A. On request, yes, we are prepared to give financial aid, to help in the applications for the charters, site selection, feasibility studies, personnel selection, training, et cetera, yes, sir.

Q. Do you do anything to help the bank on its opening day?

A. Yes, sir, sure, in personnel mainly, in that area.

Q. Now, when you or your correspondent people solicit other banks, what correspondent services do you attempt to sell?

A. We attempt to sell everything. They don't always buy

everything, or use everything, but we attempt to sell everything.

Q. And do the banks which use your correspondent services use all of the services?

A. No, they don't. There are some things like those banks that we have, electronic data processing, Fed funds transactions, escrow safekeeping, providing currency and coin. These are all really day-to-day things that we do for our correspondents.

Q. And do they buy those services as a package?

A. Normally, yes.

[584] Q. There is testimony here that banks have—I think the term was escrow safekeeping.

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. Does your bank do escrow safekeeping?

A. Yes, sir.

Q. Is this a service which you provide only for Colorado banks?

A. Inasmuch as the law applies to Colorado, yes.

Q. Now, Mr. Smukler, how is your bank reimbursed for the services which you provide through other banks?

A. Well, we are reimbursed in two ways; there is direct cost for services performed mostly in the EDP area.

Q. EDP?

A. Electronic data processing. And secondly, by correspondent bank balances.

Q. And what form do these balances take?

A. Demand account balances.

Q.Do you pay interest on those demand deposits?

A. No, sir, it's against the law to pay interest on demand deposits.

Q. Do you invest these deposits?

A. Yes.

Q. How do you invest them?

[585] A. We invest them as we do in any other—any other demand deposits; in securities or loans, after reserves.

Q. How does your gross rate of return on these deposits compare—these demand deposits compare with, say, your gross rate of return on savings or time deposits?

A. Well, since we pay interest on time and saving accounts and we don't pay interest on demand deposits, I

would believe in my opinion that our rate of return would be greater on demand deposits than they would be on time deposits. Of course, you've got the cost of handling those deposits so you've got to take that into consideration too.

Q. And do you have the cost of providing the correspondent services which you also have to take into consideration.

A. Right.

Q. Well, after taking into account all these things do you find that the correspondent banking business is a profitable business?

A. We think it's profitable. We hope that it's profitable. We're doing everything we can to make it profitable.

Q. Now, in that connection, Mr. Smukler, would a bank which places between a million and a million and a half dollars a year in correspondent deposits with correspondent banks in Denver represent an important customer?

A. Yes, an important customer to us I think or for any other bank that is in the correspondent banking business. [586] Q. Do you regard the correspondent banking business as a separate phase of your bank's overall activities?

A. Yes, sir, I do.

Q. Why is that, Mr. Smukler?

A. I believe that correspondent banking differs in its content really an approach from the commercial side of banking. Correspondent banking is a specialized business and requires a specialized knowledge, and because of this we consider—and I think any bank in the correspondent business considers their correspondent banking division as a separate part of their operation.

Q. Do you know how many banks in Denver presently offer a full package of correspondent banking services to other banks in Colorado?

A. To the best of my knowledge there are six.

Q. And could you name these six?

A. The First National Bank of Denver, the United Bank, Colorado National Bank, Central Bank & Trust, American National Bank and Security National Bank.

Q. And who do you consider are your competitors in the offering of a full package of correspondent services to Colorado banks?

A. The banks that I just mentioned.

Q. Now, your bank solicits accounts in Colorado, is that correct?

[587] A. Correct.

Q. And in other states?

A. No.

Q. Why not?

A. Well, we believe that our market for banking lies in Colorado at the moment. We have defined our efforts in Colorado as relates to this activity.

* * * * *

Q. Mr. Smukler, in your solicitations in Colorado, do you find that banks other than the five which you have just mentioned as being your competitors are getting correspondent business?

A. Yes, sir.

[588] Q. You would?

A. Sure do.

Q. Would you explain the extent of that.

A. Well, not only to the banks that I consider the correspondent banks in Denver, the ones that I mentioned, out actively soliciting for correspondent banking business in Colorado, you have banks in—out-state banks located in other metropolitan areas which are providing correspondent banking services, and then there are the out-of-state banks that are constantly in Colorado. How extensive in Colorado, I don't know, but I do know they are here seeking correspondent bank business. Banks from New York, Chicago, California, Texas.

Q. In your opinion, and based upon your experience in this business, do you think that those banks to your knowledge are providing a full package of correspondent services which the Denver banks are providing?

A. To my knowledge they are not. They may be, but to my knowledge they are not.

Q. To your knowledge, Mr. Smukler, does the Federal Reserve Branch Bank here in Denver or any other financial institution offer the same package of services to Colorado banks as do the banks in Denver which you mentioned as being your correspondent competitors?

A. In my opinion, no.

[589] Q. Now, in your opinion, and based upon your years of banking experience and your knowledge of correspondent banking here in the State of Colorado, do you believe that Colorado banks need a Denver correspondent?

A. Obviously I think they do because I'm in the business

and I want them to—I want the banks in Colorado to bank with the Security National Bank inasmuch as we are capable of taking care of them and providing a service to them. So for that reason I firmly believe that the banks in Colorado should have a Denver correspondent. That doesn't necessarily mean that they can't get services other places because I'm sure that they can. But I think Denver is from a practical standpoint, for the kind of banks that the Security National Bank wants to contact under its sphere of influence and under its ability to perform, I believe that Colorado banks, because of political, economical implications, the personal relationships which I think are extremely important should bank in Denver or would want to bank in Denver.

Q. Do you have any customers outside the State of Colorado; any correspondent customers?

A. Yes, sir, we have one.

Q. Where is that located?

A. Casper, Wyoming, the Hilltop National Bank. The reason we have that, by the way—we didn't—we helped organize that bank and although we do some loan participation [590] with them we are not their primary correspondent. We have a deposit from them. We are called upon at times to help them with some things, but we don't solicit outside of Colorado.

Q. Who is their primary correspondent?

A. I don't know. I'm sure it's a bank in Casper, but I don't know which one.

Q. A bank in Casper, Wyoming?

A. Yes.

MR. MALASKY: No further questions.

CROSS-EXAMINATION

By MR. METZGER:

Q. Mr. Smukler, I think you stated at the beginning of your testimony, sir, that you intend to be active in the solicitation of commercial bank business in the immediate future, is that correct?

A. More so than we are at the present, yes, sir.

Q. And has this intention of yours been intimidated by the acquisitions that have taken place; by the United Banks and other banks in Colorado today?

A. No, sir, they have not.

Q. What factors have influenced your decision to go into correspondent banking? Do you feel this is a growing area?

A. Yes, sir. We feel that there is great opportunity in the correspondent banking field in the State of Colorado, and we feel that we can provide a very definite service and we [591] intend to offer that service.

Q. Are the number of banks available to you today larger than they would have been had you tried this ten years ago?

A. I really don't know that, sir. I don't know if numberwise—whether they are or not.

Q. Is the dollar base, to your knowledge——

A. Dollar base, I know is, but I don't know numberwise. I'm sure there are, because there have been so many more banks. But I can't equate it to acquisitions totalwise.

Q. Now, counsel referred to the question of correspondent banks services with you and suggested that these were separate services. Are there any services—any of the basic services performed by correspondents that you don't perform for yourself?

A. I guess the only service that we don't perform for ourselves that we perform for other banks is safekeeping, because we are not under the law allowed to do that for ourself.

Q. And you can safekeep with banks anywhere in Colorado or with the Federal Reserve?

A. Yes, sir.

Q. But basically the services that you perform for a correspondent are services that you perform generally, internally in your own structure?

A. Generally speaking, yes, sir.

[592] Q. To the same people?

A. Yes, sir. Well——

Q. Well, I don't mean the sales function, but I mean the functions themselves that are performed, like your Englewood bank which I believe you indicated is a competitor of the Denver banks in check clearing, that performs check clearings, does it not?

A. Yes.

Q. Where it will clear checks for any of its customers who may want that service performed?

A. Yes, sir.

Q. Anyone that has a check clearing function—you do

make your own loans? That's one of the basic businesses of a banker, is that right?

A. Yes, sir.

Q. So when you make loans for your customers, it is not important to you that those customers are banks or not?

A. Well——

Q. You're in the business of making loans, is that right?

A. I think that it's important to us. If you are referring to loan participation——

Q. I'm referring to the function of lending as a basic function of banking.

A. It is a basic function of banking.

[593] Q. And a loan participation is a—is an aspect of that function of banking; lending?

A. A matter of degree, yes.

Q. Now, data processing—I believe you said that many banks perform this service through banks or through other agencies, is that correct?

A. Yes, sir.

Q. There are other sources of data processing services in this state than banks?

A. That's correct.

Q. And they are active and aggressive competitors in this field, are they not?

A. Yes, sir, they are.

Q. In any event, this is a separately charged item, is that correct?

A. Yes, sir, it is.

Q. And the purchase and sale of federal funds—is this an area of activity where you have competition from literally from all over the country?

A. Yes, sir.

Q. And the function of safekeeping, safekeeping is performed by banks by the Federal Reserve Board, by brokerage houses——

A. Not by brokerage houses to my knowledge.

Q. I don't mean the safekeeping funds as to public funds [594] where you have escrow arrangements. I simply mean will they stockpile them for you and clip the coupons if you want that arrangement with them?

A. Yes, sir.

Q. Now, you are going out to potential correspondent purchaser of the services of your bank, and you say to them,

"I'd like you to buy as many of my services as you are willing to." Is that the essence of your position?

A. No, sir. Well, yes and no. May I answer it?

Q. Certainly.

A. We provide or when we go out to talk to a prospective bank or a bank as a prospective correspondent of ours we will tell the bank and will tell the banker to whom we are speaking what services we have to offer, the total package of services. We don't approach it on a piecemeal basis when we go out to talk to a potential correspondent bank. We don't approach it from the standpoint of "let us do your safekeeping. We don't want anything else." Or "Let us do your demand deposit accounting, but we don't want your time deposits accounting," or "We don't want your installment accounts." We're approaching this on the basis of a full package presentation.

Q. Now, suppose he says to you, "I don't want your services or anything except A and B."

A. We will take them. You bet.

Q. Now, would you charge for all your services?

[595] A. It depends on what the services are. If they are related to data processing, yes, sir.

Q. You just charge a direct charge for that?

A. Right.

Q. But when you're selling a man a portion of the services you have, you have to charge him for the services he takes, is that correct?

A. No, usually those are paid through correspondent bank balances.

Q. The balances that you asked him for?

A. Yes.

Q. Are they designed to pay for the services he takes?

A. Yes, sir.

Q. So that if he takes all of your services he must keep a larger balance with you than if he takes part of the services?

A. That's correct, sir.

Q. And you attempt to secure a balance which will compensate you as you believe adequately for the services that he does take from you?

A. Yes, sir.

Q .Now, you stated that as one just entering the business of offering correspondent services that you initially intend to limit your area of coverage to Colorado?

A. Yes, sir.

[596] Q. If you are successful, do you intend to continue to limit your services to Colorado?

A. If we have reached what we feel is the total potential that we can possibly obtain within the confines of Colorado, we probably would expand our vision and go outside of the state for business.

Q. That's because you believe that is the way you can maximize your investment in this sales opportunity?

A. Yes, sir.

Q. Now, you stated that you would only look originally to Colorado for your clientele.

A. Yes, sir.

Q. As someone who has been in the business for all the years that you have, are you aware that other Denver banks have very substantial portions of their business outside the state?

A. Yes, sir.

Q. And that they serve largely many states in the surrounding areas?

A. Yes, sir.

Q. Do you believe that their market is limited to Colorado?

MR. MALASKY: Objection, Your Honor. I don't believe the witness testified——

MR. METZGER: He qualified the witness as an expert [597] in this area very carefully, Your Honor.

THE COURT: I'll permit him to answer.

A. I really can't make a management determination for other banks that are in the correspondent bank business.

Q. From observation of where they draw their business and where they solicit it——

A. They solicit it outside the state of Colorado, but it is, I believe—I have no figures at fingertip or in my mind—but it is my belief that the majority of their correspondent bank deposits and the majority of the number of banks that they serve are probably located in Colorado.

Q. Suppose the majority of the banks that they serve were located outside Colorado and 35 percent of their business was drawn from those banks. What would you say their appropriate market would be?

A. Well, I'd say the majority of their market would be

within Colorado. They would have a substantial market outside.

Q. And that they would be serving wherever they have that substantial volume of business, is that correct?

A. Yes, sir.

Q. When you analyze a correspondent's bank account, is it true that usually you follow the same procedure you follow for any large commercial customer in analyzing the profitability of that account?

A. You're talking about demand balance versus the [598] services that we perform?

Q. Yes.

A. Not identical but——

Q. With little difference?

A. Generally speaking, yes.

Q. And you look at both of them to see whethey they're profitable to you, is that correct?

A. That's correct.

Q. Now, I don't think you testified to this but—is it your proposal that Security will seek the correspondent business of all banks in the State of Colorado initially?

A. Initially, no, sir, we will not.

Q. What is your proposal?

A. Well, I'll tell you one thing—while they are all here I've got my guys out working so I guess——

Q. Are you going to limit yourself?

A. We're going to limit ourselves to a specific—to specific groups of banks within the state.

Mr. Malasky: Your Honor, I object. I don't believe the witness should be required to tell his business plans to all his competitors. If they want to clear the courtroom, I believe that may be appropriate cross-examination.

Q. Do you feel that you're revealing anything that isn't part of your normal game plans?

A. Probably not but—we're going to limit our initial [599] activities to banks of a certain total resources size. [600] Q. Is the First National of Greeley in that group?

A. No, sir, not at the present time, they are not.

Q. And I believe you indicated on your direct examination that you compete in Colorado with anyone offering correspondent banking services in that area?

A. Yes, sir.

Q. And to your knowledge there are many banks from outside of the state that would be vigorously looking for account business here, is that correct?

A. Yes.

Q. Now, I believe you testified on your direct examination that in your judgment you should have a Denver correspondent?

A. Yes, sir.

Q. Does a Colorado bank absolutely need to have a correspondent in Denver? I do not mean with you. I am sure they need that, but with the rest of them?

A. No, they don't actually have to have one. I suppose that is just like saying you didn't absolutely have to have this trial in Denver. You could have had it in Washington, maybe. I don't know that, but it is certainly convenient for us to have it here because all the witnesses are here and all the litigants and the Judge is here.

Q. And all the riots are there?

A. Everything is here.

[601] MR. METZGER: Thank you.

THE WITNESS: Yes, sir.

REDIRECT EXAMINATION

By MR. MALASKY:

Q. Is it more convenient for banks in Colorado to have their correspondent in Denver?

A. In my opinion it is, yes, sir.

Q. Now, Mr. Smukler, I believe you stated that your bank intends to get more actively involved in the correspondent banking business. Now, as you grow, would your bank like to have the opportunity to sell these correspondent services to all banks in Colorado?

A. Yes, sir.

Q. And in this connection, Mr. Smukler, as a practical matter, do you or would you solicit banks who are subsidiaries of other holding companies?

A. Probably not.

Q. And why not?

A. Because I think that the pasture would be greener in other directions.

Q. And why is that?

A. Well, if they are part of a holding company I would assume they would want to do business with the major bank within that holding company.

Q. Pardon me?

[602] A. If they are part of a holding company, I would assume they would want to do business with the major bank within that holding company.

MR. MALASKY: No further questions.

RECROSS-EXAMINATION

By MR. METZGER:

Q. Now, that we have raised that question, you are a member of a holding company, are you not, Mr. Smukler?

A. Yes, sir.

Q. Is it not true that your organization became a holding company because it felt there were certain advantages in economies of scale and operations of a holding company?

A. Yes.

MR. MALASKY: Your Honor, I believe I raised the question with regard to correspondent banking business. I don't think it is appropriate to open up the whole range of holding companies.

THE COURT: I don't see that they opened it up by this question.

MR. METZGER: Well, counsel suggested, Your Honor——

THE COURT: I ruled in your favor.

MR. METZGER: I am getting old, Your Honor.

Q. And do you believe that the organization of these holding companies has been and will continue to be an important pro-competitive event in banking in Colorado?

[603] A. Accretion of new holding companies?

Q. New organization, and operation of holding companies that we have.

A. Yes, I do.

Q. Do you believe that the public is better served with a holding company structure than it——

THE COURT: Well, this——

Q. (Continued) ——than without?

MR. MALASKY: Your Honor, I am going to have to object.

THE COURT: Sustained. We will take a short recess, unless—do you have any more to ask him?

MR. METZGER: No, I do not.

THE COURT: All right.

(The Court recessed from 10:50 o'clock a.m. until 11:10 o'clock a.m.)

MR. MALASKY: May it please the Court, the plaintiff calls Dr. George Hall.

THE COURT: All right.

GEORGE R. HALL

called as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: Be seated and give us your full name, address and occupation.

THE WITNESS: George R. Hall, 1042 El Medio Place, [604] Pacific Palisades, California, Senior Economist, The Rand Corporation, Santa Monica, California.

THE COURT: What corporation?

THE WITNESS: The Rand Corporation, R-a-n-d.

DIRECT EXAMINATION

By MR. MALASKY:

* * * * *

[607] MR. MALASKY: Your Honor, that concludes my questions on qualifications of Dr. Hall and I would respectfully move that he be qualified as an expert to testify in this proceeding, if there is no objection.

THE COURT: Proceed.

Q. Dr. Hall, were you in the courtroom yesterday afternoon and this morning?

A. Yes, later afternoon.

Q. And did you hear certain witnesses testify as to their description of correspondent banking services? And what correspondent banking is?

A. Yes.

[608] Q. And do you agree with the testimony that was given by those bankers?

A. Yes, as I understand the term, it means the furnishing of services and information in return for balances from other banks and sometimes direct charges for things like data processing services.

Q. Now, based on your experience, Dr. Hall, and your work with the Federal Reserve System, do you consider correspondent banking to be a specialized service?

A. Yes, it is a specialized part of banking. It represents

providing services to a distinct group of customers, the banks, other banks. It generally requires a specialized facility to provide these services. That is of a correspondent department frequently a senior vice-president will be assigned responsibility, oftentimes will have a title such as "Correspondent Director." The demand for the services, for correspondent banking services, differs from the demands for other banking services. The payments arrangements are somewhat different. Just generally—it is generally a specialized type of activity and service. It is recognized in the field. That is, people will speak of being in the correspondent banking business. There is an annual—the "American Banker" has an annual correspondent banking issue and various special articles. There have been a lot of surveys and there is a literature on the subject that deals [609] specifically with this relationship of bank to bank.

Q. Now, Dr. Hall, why do banks offer correspondent banking services?

A. Well, it is a very profitable activity for them. They generate payment for it. They receive demand deposits which are the major input of a bank.

THE COURT: It is regarded as a distinct, so to speak, line of commerce?

THE WITNESS: Yes, sir, the deposits are shown separately on statements.

MR. MALASKY: Your Honor, I think we will try to bring that out in the course of Dr. Hall's testimony this morning.

Q. Now, Dr. Hall, from the viewpoint of the bank making use of correspondent services, are all the banks which offer such services fungible?

A. No, because the location of the bank is very important. A bank, for example, will have some demands that are highly specialized and can only be done in some one place. Foreign trade, for example, or something like that, you tend to use a bank in one of the foreign trade centers, or somebody yesterday mentioned some oil business which they did in Houston or Dallas.

THE COURT: Dallas.

THE WITNESS: Dallas, I guess it was, right. You [610] tend——

THE COURT: Old Capitol of the World.

THE WITNESS: Houston has a feeling about that, too.

Then there will be—but then these are what I would call the specialized demands, but most banks will have a demand for a daily, ordinary run-of-the-mill set of activities, for which they will use a correspondent bank, and here the question of convenience and location applies in a somewhat different way, but it is also very important.

The point is that the location of the correspondent bank you are dealing with is a very important consideration.

Q. In this connection, Dr. Hall, I would ask you to look at Plaintiff's Exhibit 187, and I would ask you if you have in your analysis for the preparation of this case examined Exhibit 187?

A. Yes, I have. I have studied this.

Mr. Malasky: Your Honor, I would at this time move Plaintiff's Exhibit 187 into evidence.

Mr. Metzger: No objection, Your Honor.

The Court: Very well, received.

(Whereupon, Plaintiff's Exhibit 187 was received in evidence.)

Q. Now, Dr. Hall, what does Plaintiff's Exhibit in Evidence 187 indicate to you?

A. It indicates to me that most—almost all, all [611] but four banks in Colorado have Denver correspondents. The figures are taken from as of June 30, 1970. They show the correspondent relationships of banks in Colorado cities of population over—well, various populations. I ran some totals on this exhibit. There are 227 banks. 223 of them have at least one Denver correspondent. 108 of the banks have correspondents in other Colorado locations and 178 have correspondents outside of Colorado. The point is that all, practically all, of Colorado banks do have at least one Denver correspondent and—but in general banks have, most—a lot of banks—well, not quite half, I see, but at least almost half of the banks have correspondents outside of Colorado, which is at least consistent with the point I was making before that—or, at least, I mean that you will have various types of correspondent business. A small bank will want somebody for specialized services in New York and they will also want a local correspondent to do its business. [612] Q. Dr. Hall, I now show you Plaintiff's Exhibit

188 and ask you if in your preparation of this case you have used this and analyzed that exhibit?

A. Yes, I have.

* * * * *

[614]

(Whereupon, Plaintiff's Exhibit 188 was received in evidence.)

Q. (By Mr. Malasky) Doctor, would you state what significance, if any, Plaintiff's Exhibit in Evidence 188 has.

[615] [A.] Yes, this exhibit shows for the years 1967 through 1970 the interbank demand deposits that is the correspondent deposits of Greeley bank.

Q. Which Greeley bank?

A. Excuse me, of the First National Bank of Greeley in the percentage of those deposits which it maintains in the large Denver correspondent. I think we can take the demand deposits as being equivalent of total interbank deposits. Very few correspondents carry deposits any other way; country correspondents.

This shows that the percentage in Denver has varied from 93.5 down to 86—it's generally been falling somewhat. But, it still keeps over as of 1970 it would still be keeping 86 percent of its demand deposits in Denver. This is from other figures I have seen on Denver banks and from the conversations I have had with Denver—or excuse me—were the figures I have seen for other Colorado banks and with conversations I have had with a few Denver bankers. This is not an unusual figure though many banks have lower figures. They vary considerably with the amount that they keep in Denver.

Q. I now show you plaintiff's Exhibit for Identification Nos. 189 and 190 and I would ask you if you have——

Mr. Metzger: Before the witness testifies as to 189 or 190, this document makes reference that the witness is [616] to testify as to proposed acquisitions which are not before this court, one of which is not a proposed acquisition. There is no contract outstanding at this time. We are entering into an area where a witness is testifying as to a theory based upon speculation as to what may or may not come to pass and that speculation as to Colorado Springs National Bank speaks more speculatively than as to the others.

Mr. Malasky: Your Honor, if I may respond—This is one

of several documents which we have prepared which go to the fact that there is indeed a trend toward vertical integration in correspondent banking business in Colorado, and the Supreme Court and lower courts have consistently held time and again that trends, past and present and future, in vertical cases, are of utmost importance. I would refer the Court to the Brown Shoe case, to the Kimberley-Clark case, the case of U. S. Steel versus Federal Trade Commission, which are all cited in our brief and which all take into account the importance of trends of acquisitions in vertical cases.

THE COURT: Well, at this stage the Colorado Springs National Bank could not be considered at all.

MR. MALASKY: There is presently pending in this court an action by the United States challenging the acquisition of the Colorado Springs National Bank by the United Bank of Denver.

[617] MR. METZGER: As to which there is no contract.

MR. MALASKY: I think we have every reason to believe unless there is some testimony to the contrary that this is an active plan of acquisition and for that reason I believe that the evidence here is highly relevant.

THE COURT: Well, there is nothing here about the Colorado Springs—oh, I see.

MR. METZGER: Your Honor, counsel has repeated again and again that the case law supports the proposition that things which have not happened, mergers which are prospective, may be considered in these actions because they have been considered in others. I challenge counsel now to produce one case which supports that proposition. We have examined all of the cases in plaintiff's brief. They relate to past transactions and how they affect trends.

MR. MALASKY: Your Honor, if I may respond, I have three cases to which I could read. In any event, if that——

THE COURT: Go ahead and read them. That's better than just talking, I think. If you've got something, why, lay it on the line.

MR. MALASKY: The first case is, of course, the—the first case that the Supreme Court decided on the issue of vertical integration of amended Section 7 which is Brown Shoe——

THE COURT: I am familiar with that.

[618] MR. MALASKY: 370 U.S. 332, the Court states, and I quote:

"Another important factor to consider is the trend toward concentration in the industry. It is true of course that the statute prohibits a given merger only if the effect of that merger may be substantially to lessen competition. But, the very wording of Section 7 requires a prognosis of the probable future effect of the merger. The existence of a trend toward vertical integration which the district court found is well substantiated by the record. Moreover, the Court found a tendency of the acquiring manufacturers to become increasingly important sources of supply for their acquired outlets. The necessary corollary of these trends is the foreclosure of independent manufacturers from markets otherwise open to them."

I would next refer to——

MR. METZGER: Your Honor, referring to that——

THE COURT: I don't see that the defendant should have to bear the burden in respect to the Colorado Springs bank situation. I mean, why didn't you bring in a lot of other banks? Why did you pick them out?

MR. MALASKY: These are the acquisitions by major Denver-based correspondents which are presently proposed in the State of Colorado.

[619] THE COURT: Well, you have listed the First National Bank of Greeley, Security of Sterling, National State Bank of Boulder. But why do you put the Colorado Springs National Bank into that?

MR. MALASKY: Of course, all of these have been proposed to the Federal Reserve Board. But, it is not only—— The cases hold that it is not only the acquisition by the particular defendant at hand that is crucial in assessing the trends toward vertical integration industry but it is the overall industry structure and overall industry trend towards vertical integration.

In that regard I would refer the Court to the case of United Stated States Steel Corporation versus F.T.C. which is found at 426 Fed 2d 592. It's a 1970 decision of the Sixth Circuit. This case says, and I quote at Page 602,

"One of the purposes of Section 7 is to reverse the trends toward concentration in American industry. Thus an acquisition which may be viewed as a part of an industrywide trend toward vertical integration may

be considered particularly obnoxious to Section 7." And skipping about two lines—"The evidence reveals widescale national and urban trends toward vertical integration and concentration in the cement and concrete industries," which were the relevant lines of commerce there—"since 1958. Cement companies in the NYMA," [620] which I believe is New York Metropolitan Area, "have been seeking short outlets for their products by requiring the . . . among other factors, the commission's response to these pressures to vertically integrate has resulted in the divestiture of the acquisition of the fourth, fifth and sixth largest readymix companies."

This is part of the response that the commission also attacks the instant acquisition——

THE COURT: Your evidence relative to correspondent banks so far has tended to show that one small community bank tends to latch on to one Denver bank that will furnish them with services. Once they make this commitment I don't think they intend to change very often. And I don't really know that—in other words, it's somewhat self-defeating, the evidence that you have offered, and I don't know whether it's going to have any tendency to diminish competition or not. But, since it may—you may be able to show something. I mean, acquisition trend in this area.

What more do you——

He has suggested that this is just the first of a deluge of material.

MR. MALASKY: This is not a deluge, Your Honor.

THE COURT: That if we let the door open just a crack you will push through with a whole flood. That we will be inundated with paper.

[621] MR. MALASKY: My documents are very—there is about 25 of them.

THE COURT: Why don't we view them right now then as a whole. I mean, so we will see what part this has in your total presentation.

MR. MALASKY: May I just add one more point. You asked what effect and you mentioned, I believe—I believe you stated that other banks once they are acquired wouldn't the whole purpose of vertical—the whole theory and the whole reality of vertical integration—The courts have consistently held that the primary vice of vertical integra-

tion is foreclosure to other suppliers of a service—of significant customers of that service. And as more I think the evidence will show as an offer of proof I state now that the evidence will show that as this vertical foreclosure trend continues there will be less and less banks customers for these services from the six Denver banks available not—to not only them but to whatever future banks may want or other new banks want to enter into the correspondent services. This is the reason that the courts have held that the trend is so important.

It is the foreclosure of independent sources of business to people supplying these services.

THE COURT: I'm convinced that you're convinced. Why don't you show me the papers, please. I'll check them out.

[622] He has just handed me 191 through 220. Are you familiar with these?

MR. METZGER: I am, Your Honor. All of these documents are predicated upon the completion of each of the proposed acquisitions and as the Court indicated we are to bear the burden of all that may well be. The burden of Christmases yet to come.

MR. MALASKY: I would note, Your Honor, that in many of these it is possible to consider each one individually, and many of them, each one is listed separately so that they are not all in one mass that you can't segregate them out. But, I would say that the——

THE COURT: Well, this line of exhibits all pertain to correspondent banking?

MR. MALASKY: Yes, sir, they do. They all pertain to the vertical integration aspects of which we find in the correspondent banking market which we have alleged.

THE COURT: You're offering these only to show that this is part of a general plan or a general trend?

MR. MALASKY: Your Honor, we're offering them to show what the structure of correspondent banking services—the full range of correspondent banking services in Colorado; to show the effect of this acquisition in itself and viewed in light of other acquisitions in the past and present trends toward vertical integration and in that respect I believe [623] that they are extremely relevant to the issues presented here.

THE COURT: Well, I take it that you're offering it for

more than a general plan, from what you said. You're not simply offering this to show that there is a plan or trend in order to shed light on the nature and character of the Greeley acquisition.

MR. MALASKY: Your Honor, we believe that in this context, in the correspondent banking phase of our case, the market involved is the State of Colorado. It is not limited to Greeley or the Greeley area in this phase of the case.

THE COURT: Then the objection will be sustained. Because we planned to try this case on a local basis, throughout, and I am not going to shift gears. I think you're shifting gears. From commercial banking to correspondent banking. Mr. Schoepke told me that the main emphasis of this case was commercial banking, and I am not going to try a statewide conspiracy case and condemn and prejudge the other cases that are filed, that are not before me. And, so, you're just going to have to change your tack or I'm not going to consider this other matter.

MR. MALASKY: Your Honor, we did amend our complaint as you recall to include the correspondent banking aspect.

THE COURT: This is not going to skirt the earlier ruling that we would not consolidate these cases for trial.

MR. MALASKY: Well, Your Honor, in view of the—[624] and in view of the fact that the vertical cases have time and again emphasized the importance of industry structure and the trends toward acquisitions and since the market we allege——

THE COURT: I told you that I might consider hearing this if it is offered for a limited purpose, namely, to show a general plan and as bearing some light with respect to the case at bar, that's all.

Now, if you want to try this whole case in one lump sum, I'm not going to do it, that's all. That's my ruling. And, that's what you have represented to me, and I am not going to do it. I have ruled in pretrial matters that we're going to try these things separately, and give everybody an opportunity to fairly present his particular issues, whereby he will not be burdened with collateral relationships and transactions.

And, this is as I understood was the understanding, you know. I'm not going on what the exhibit looks like. I'm going on what you're telling me. You just want to expand the scope of this prosecution.

[625] MR. MALASKY: Your Honor, I respectfully ask the

Court to consider the fact that in antitrust cases we are not confined to one line of commerce. There are——

THE COURT: Oh, I understand that.

MR. MALASKY: Commercial banking is one line of commerce.

THE COURT: You and I are not communicating. I understood that. I understood that. There is no problem on that score. Don't you understand what I am saying to you as to why I do not feel that we should try the state as a whole at this time, whereby we will be pre-judging the cases on file?

MR. MALASKY: Your Honor, may we have a break for lunch perhaps?

THE COURT: It is a little too early.

MR. MALASKY: Okay. Well, may I continue——

THE COURT: If you will just change your tack and offer them for the purpose that I think they are relevant, I will tell you what, I will just receive them on a limited purpose.

MR. MALASKY: Well, may we have Dr. Hall testify as to——

THE COURT: I will just receive these documents for the purpose, as you suggested in one part of your speech, as showing that a trend exists, but only as it tends to shed [626] some light and give some indications as to the transaction at bar. That's all.

MR. MALASKY: I am very sorry, Your Honor. That is precisely—perhaps we were not communicating and perhaps it is my fault. It is clearly for the purposes of showing the effects of this acquisition. I am not going to make any attempt to try these other cases. It is purely as it relates to this acquisition.

THE COURT: Well, that's what you told me.

MR. MALASKY: Well, I apologize if I misspoke, but that is the purpose and we feel that in viewing this acquisition the Court should take notice of the trend that exists and for that reason we offer these documents.

THE COURT: Well, I still want to pass on these particular questions in each instance, because, as I say, I don't want to get in a position of holding or making a finding or determination with respect to any one of these pending cases.

MR. MALASKY: I assure the Court that we are not asking

for—this does relate to the Greeley acquisition. That is the case at bar. That is the case that we are dealing with here and we feel that the Greeley acquisition in and of itself is a violation. We are not in this proceeding, of course, asking the Court to make a determination as to the legality or illegality of the other acquisitions which [627] are presently pending.

MR. METZGER: May I ask the Court then to——

THE COURT: And also you have got this problem of the acquisitions being in a state of flux at this point, too, you know, and so it narrows it even more.

MR. MALASKY: Perhaps it would go to the weight the Court would want to ascribe to the exhibits rather than their admissibility.

THE COURT: Because intention is not an element or a motive. You don't have to prove that there is an intent here, do you?

MR. MALASKY: Your Honor, the Brown Shoe case does mention purpose as one of the factors in considering a vertical—in consideration of a vertical foreclosure case. I believe it is one of the six factors that the Court in Brown and I would say the Court in the U.S. Steel case——

THE COURT: Your brief, I don't know who prepared it, cites cases to the effect that knowledge and intent is no element of this kind of a——

MR. MALASKY: It is not really intent. It is economic——

THE COURT: Isn't that correct?

MR. MALASKY: It is economic purpose, Your Honor.

THE COURT: You cite a whole line to that effect.

[628] MR. MALASKY: I believe it is economic purpose, and one of the economic purposes is that the effect will be to foreclose competitors, actual and potential, into obtaining business of correspondent banking customers. The Brown Shoe case made that clear, and as I said—I believe it is the——

THE COURT: Well, just bear in mind that I am not going to try these individual cases in any depth. Just bear that in mind.

MR. MALASKY: I will, Your Honor.

* * * * *

[629] Q. I sort of forgot where we are. I believe we were referring to Exhibit 190 and Exhibit 189 when we left off,

and I wonder if you would explain what these exhibits indicate to you?

A. Yes, these tables, these two tables, are the same except for the dates. Plaintiff's Exhibit 189 deals with the situation as of December 31, 1969. Exhibit 190 deals with the demand deposits as of August 31, 1970. They show four banks, two of which First National Bancorporation has received Federal Reserve Board approval to acquire, one where its application awaits approval, and one bank where United Bank of Colorado had received Federal Reserve Board approval. It shows that these banks generally maintain fairly large percentages of the demand deposits with six Denver correspondents. It fluctuates a little bit. For example, Colorado Springs National Bank, the percentage fell from 76 percent in December 31, 1969, to 35 percent in August 31, 1970. The other banks remained roughly equivalent figures, all about 75 percent.

Q. And, Dr. Hall, do you draw any conclusions from Plaintiff's Exhibits in Evidence 189 and 190?

A. Well, I think this—yes, I do. I think these two exhibits reinforce the picture that was given by the previous exhibit of the fact that banks such as the First National Bank of Greeley tend to carry a lot of their [630] correspondent demand deposits in Denver, with the six Denver correspondents.

Q. Would the percentage as carried in Denver reflect the day-to-day or full services of——

A. Well, I think—yes, I think this reflects the fact that a bank is going to have a lot more demands for daily types of services, the routine kinds of business, than it does—which it would tend to do at some nearby area, some nearby trade center, than it would for the specialized services such as some kind of foreign exchange transaction or something like that for the kinds of country banks in Colorado—that is, banks which are not major metropolitan units operating in a national financial market.

Q. Now, Dr. Hall, I show you Plaintiff's Exhibit 191 in evidence and I would ask if you would describe the significance if any of that exhibit?

A. Yes, sir, these are figures for the First National Bank of Greeley. They show the number and dollar amount of loan participations of Greeley. They show the number and dollar amount of loan participations sold to Denver

and non-Denver banks. That is, we are dealing here not with the deposit side but with the loan side. These are for the years '67, '68, '69 and part of 1970. They show that most of the—the dollar amount of participations, which would be the third column from the—dollar amount of participations [631] to Denver banks, third column from the right, that most of their loan business is done in Denver. One year, 100 percent. In 1970, which was the lowest year, 70 percent. In one way you would expect the loan business to be a little less concentrated in Denver than the deposit business, because participations are a kind of business which it is easier to do outside the major center, as the previous witnesses have testified to. They tend to do more—they tend to do more participations in various places around the area or even nationally. However, Greeley, these figures indicate, also does most of its loan participation business in Denver.

Q. What do you mean by loan participations?

A. Loan participations can come—comes about when two banks jointly participate in meeting the credit needs of some single customer. This request can take several forms. The previous witnesses spoke, for example, of overlines, the kind of loan which is made when a customer's credit request exceeds the lending limit of the bank and a correspondent will pick up the amount above the lending limit.

You will also get participations sometimes where several banks will participate on a pool basis in a single loan, even though it might not be overlines. One of the witnesses—I don't remember who—spoke of the fact that [632] they, with their correspondent participated both ways. That is, their correspondent picked up some participations in theirs, but also at times when they had funds that they needed to apply in investments they obtained participations from their correspondent. Participation is simply a general term which covers two banks, two or more banks, jointly involved in a single credit transaction. For the country banks—the country bank, by the way, is a term of art. It doesn't necessarily mean a bank out in the hamlet. It is simply a bank which is not one of the banks in the major metropolitan region. When I say country, it may be a pretty large city. It comes from some old Federal Reserve terminology back when you had Reserve cities or banks that had different kinds of Reserve requirements. But most of

the country banks or the heaviest—the most important type participation in general I think is overline loans.

Q. Dr. Hall, I believe you referred a few moments ago to a suburban Los Angeles bank or something like that. In your opinion, could a suburban Los Angeles bank, for example, have correspondents in both Los Angeles and, say, Denver or Atlanta or New York?

A. Well, yes. This goes to the point of the fact that the demand for banking services, for correspondent banking services, will tend to be geographic, specific——

THE COURT: Well, wherever they need them.

[633] THE WITNESS: They need them where they need them. It is not one—you will tend to maintain a variety of—a bank will likely have a variety of correspondent relationships.

Q. Will they perform the same functions?

A. No, generally not. They will generally have, as the previous witnesses have testified to, they generally have a prime or primary correspondent who handles the day-to-day business. They generally have a variety of other correspondents. Also, I think, or at least my understanding from talking to bankers, is that some of them like to have some reserve or some—excuse me—some correspondent relationships that they can swing to if they get dissatisfied with their prime correspondent, that they enjoy having somebody with whom they have at least a partial relationship that they can move in.

Q. Dr. Hall, I would refer you at this time to Plaintiff's Exhibit in Evidence Number 29, and ask you what relation that has, if any, to what you have just testified to?

A. Plaintiff's Exhibit 29 is Interrogatory 25, which shows the correspondent banking relationships of the First National Bank of Greeley for a period of running between the 1st of January, 1967, to August 31, 1970.

THE COURT: What number is that now?

[634] THE WITNESS: This is Plaintiff's Exhibit 29.

THE COURT: Oh.

THE WITNESS: Interrogatory 25.

MR. MALASKY: That has been received in evidence, Your Honor. All right.

A. (Continued) I find it hard just to interpret this in terms of the figures, so I ran percentages on it, and it shows

a very interesting—both the totals and the trends are rather interesting to me. In its prime Denver correspondent, which was the Colorado National Bank up until 1968, and after that the First National Bank of Denver, the First National Bank of Greeley kept in—the 1st of January, '67, it had 80 percent of its deposits. At the end of '67 it had gone up to around 90 percent and the end of '68 it had dropped to about 80, and then in the midyear of '67—excuse me—at the end of 1969, it had dropped down to 58 percent and in the end of 1970 it had dropped to 70 percent. However, most of——

MR. METZGER: Just for the record, do you want to correct that last percentage?

THE WITNESS: Excuse me, 69.7 percent.

MR. METZGER: No, try again.

THE WITNESS: Would you care to suggest a number?

MR. METZGER: 25 or 30 percent, just on a quick eyeball.

[635] A. (Continued) What I said, in the prime correspondent, their largest Denver correspondent, the total of the two Denver—the total of their—all of their Denver correspondent balances, which would include the three Denver banks in which they keep as correspondents is somewhat more stable. It starts off at 91 percent and up a little bit to about 93, 94, dropped back to 90 and went to 88 and in the last of '70 it went to 86 percent. The converse of that is that their use of non-Denver correspondents went up from a little less than nine percent to about 14 percent. They are using—over the picture, their total picture, their total use of correspondents, the mix shifted towards the non-Denver correspondents. However, they still use Denver correspondents for 86 percent of their business and they used a prime correspondent for, well, roughly 70 percent. There was one—well, that's—excuse me, I think that's what I have.

Q. Now, Dr. Hall, referring to Plaintiff's Exhibit in Evidence 29, where did First National Bank of Greeley maintain the largest amount of their correspondent deposits at the——

A. Well, I just said, according to this exhibit, they had their largest amount in the Colorado National Bank up until sometime in 1969 when the major—the bulk of their business shifted to the First National Bank of Denver, though [636] they still continued to keep a fair proportion

of business in the Colorado National Bank. However, that declined by 50 percent in 1970. They appear to be—the picture you get from here is that they are moving their——

MR. METZGER: Objection, Your Honor. The witness is testifying as to speculation, but not only speculation but he is wrong on his speculation.

THE COURT: Well, I suppose he can testify as to what transpired, can't he?

MR. METZGER: No, Your Honor, he is testifying that the First National Bank of Greeley is moving its relationship. In point of fact, it was the Colorado National that moved its relationship, but in any event the witness was speculating as to who was doing what.

THE COURT: Well, the numbers changed.

THE WITNESS: The numbers changed so that——

THE COURT: Well, we will let that stand, and there is a sharp change in the numbers, apparently.

THE WITNESS: There was a sharp change in the numbers from '68 to '69, and a lesser change in the numbers from '69 to '70, but still there appears to be a downward trend in utilization by Greeley, for whatever reasons, of the Colorado National Bank in Denver.

THE COURT: I think that's perfectly admissible, to show that there were some changes made.

[637] MR. METZGER: Your Honor, the witness's testimoney implied that the First National Bank of Greeley had reduced its balances with the Colorado National Bank.

THE COURT: Because of the acquisition.

MR. METZGER: It was speculation on the witness's part and it was untrue.

THE COURT: Well, we ruled out that part of it.

MR. METZGER: All right, Your Honor.

THE COURT: It is open to inference, I suppose, so undoubtedly you will want to explain it at some time when you offer evidence.

MR. METZGER: Yes, Your Honor, we do.

THE COURT: All right.

Q. Dr. Hall, based—I'm sorry.

A. Excuse me. Could I continue?

Q. Yes.

A. Continue with Interrogatory 25, because I find Pages 2 and 3 to be very helpful with respect to this point of the

kind of daily demands or the full package of services and the specialized services. The second and third pages show the services which the First National Bank of Greeley obtained from each of its correspondent banks during——

[638] THE COURT: Which number is that one, now?

THE WITNESS: We're still on PX 29, Plaintiff's Exhibit 29, Pages 2 and 3. This is Interrogatory 25. And it shows that for the Colorado National Bank of Denver and in 1966 and '67, and in the First National Bank of Denver, 1969 and 1970, that they utilized a wide range of services including loan overlines, wire transfer services, Bankamericard services, payroll services and so on for their other banks. They tended to use these for, oh, two or three services.

Harris Trust, for example, they used—started using it for investment counseling; some bank drafts. Denver U. S. National, they used that for federal funds and also bank drafts. First National Bank of Omaha is loan overlines as is the First National Bank of Chicago, loan overlines. Wells Fargo Bank, they are using now for overlines, bank drafts and for their other correspondent banks, again, bank drafts and also the business referrals.

So what you get—the picture that emerges from this is that they use a number of banks for loan overlines and for some other specialized services such as business referrals and—or trust investment counseling, and then they rely on their prime Denver bank for a wide range of services.

Q. Turning to a slightly different subject, Dr. Hall. Are correspondent banking services distinguishable from other banking services?

[639] Yes, they are. They have a whole different demand and supply pattern needs. Not every bank provides the kind of tailormade services that this sort of full-range of pattern of services is. The kinds of bank demands are different from the other types of demands levied on banks. There is as I said—specialized—there is a specialized set of arrangements here that are used to provide these kinds of services.

Q. Are there any reasonable substitutes for this full package of services?

A. Not for the full package. For various individual kinds of services, yes. I tend to use a four-way classification of correspondent services when I'm thinking of it. First, you have got check clearing. Almost every correspondent

loes and almost every country bank uses a correspondent for check clearing. It was very surprising to me, the fact that—this dominance of use of correspondent banking for clearing—check clearing services.

And as we have heard, I guess you can use the Fed for that, although almost no—or the banks below 100,000—it's relatively few of them do even this, though they may be Federal Reserve members. The reason as near as I can determine from my thinking is that the federal simply——

• • • • •

[640] THE COURT: Well, it is a fact, I guess, that the Federal Reserve Bank is not used as a check collection or clearance?

THE WITNESS: Yes.

• • • • •

[641]

VOIR DIRE EXAMINATION

By MR. METZGER:

Q. How many banks in the State of Colorado perform what portion of their check clearings with the Federal Reserve Bank in Denver?

A. Direct with the Federal Reserve Bank? Or through ——

Q. Yes.

A. ——through a correspondent?

I can't answer that question for the State of Colorado. I have studied the survey which was done by the Federal Reserve Bank of Kansas City for all of the Tenth Federal Reserve [642] District plus some other states which are adjacent to the Tenth Federal Reserve District which does include Colorado. So I can't speak for Colorado. The number I can cite to you for this is only—of course doesn't involve Colorado. It involves a much wider and very general area that includes a lot of different states.

• • • • •

MR. METZGER: Yes, Your Honor. He's testifying as to the reasons why the Fed does or does not have a substantial portion of the business without even knowing what [643] proportion of the business the Fed has. The clearest speculation.

THE COURT: How much do they have?

MR. METZGER: I don't know. This is a question I have no—I do know in checking this out, Your Honor, that most banks in Denver clear at least part of their items through the Federal Reserve Board.

THE COURT: I have no doubt they do.

MR. METZGER: And many of them clear them all. I don't know what those proportions are.

THE COURT: There are probably certain types of items.

THE WITNESS: Might I clarify the question. I specifically said I was talking about banks under 100 million in deposits; large banks do. In fact, all checks ultimately get cleared through the Fed. The question is which clear direct with the Federal Reserve as opposed to those who clear at large. The local branch of the Federal Reserve Bank is a member of the clearing house in Denver so Denver banks which are members of the clearing house would naturally clear that way and, of course, all large Denver banks will tend to clear through. My only—my remarks were not in those contexts—not in this context specifically related to Colorado. They were applied generally to smaller banks, that is, banks under 50 million in deposits or a hundred million in deposits [644] throughout the country generally. And the judgment I have reached on the information that I have obtained—it appears to be that the Federal Reserve Banks are just not very service oriented. The Federal Reserve is not known for its great outgoing service.

MR. METZGER: Objection, Your Honor. This is precisely the line of inquiry that was objected to.

THE COURT: Overruled.

THE WITNESS: But I would point out—and the point though that I was trying to make was that a bank can clear through the Federal Reserve should it care to do so. But that many banks choose not to do so. To me, a surprising number of banks chose not to do so.

THE COURT: All he's saying is that the private industry is to be preferred. This diabolical socialism doesn't give off these services.

THE WITNESS: I was trying—yes, that's exactly what I was saying.

* * * * *

[646] Q. Dr. Hall, how are correspondent banking services sold?

A. Well, they are sold as a package in the sense that, as was explained this morning, really, banks offer a broad,

full range of services, and country banks take what services they want and make use generally from their prime correspondent of a wide range of services in return for which they maintain demand deposits. Sometimes there are a few direct fees. [647] These demands are now—within the last few years, banks have been requesting demand balances, using some fairly rigorous analysis. Until, oh, I don't know, ten years ago, perhaps, it was more implicit analysis.

THE COURT: Well, what's the basis for the competition? Better services?

THE WITNESS: Better services, yes, is mostly the competition, and there is some—with this analysis, it is kind of what items they put in the analysis, how much they let them run over. There seems to be some kind of implicit price competition. The analysis—this is a peculiar pricing arrangement, this business of maintaining demand deposits, but then trying to sort of analyze why, what the level should be, and there have been a lot of surveys of bankers saying, "Wouldn't it be better if you priced per service, you have services charges?" And almost unanimous the answer—the bankers come back and say, no, they like this present service, and apparently the reason is that there is a lot of common elements in it. The country bank may carry—if he is a state bank, he would probably be using these correspondent balances as part of his reserves. Even if he is a national bank and has to carry reserves at the Federal Reserve, he may be using these as secondary reserves or liquidity functions. Also, they believe—and he will be using—it also compensates the bank and provides him the sort of working arrangement for [648] check clearing—in other words, it performs two or three functions for the country bank frequently and he doesn't know how to sort of split these out in terms of figuring exactly what it is worth.

[649] MR. METZGER: Your Honor, may I object to this continuing line of answers as being unsupported by any kind of foundation. It is apparently hearsay as to what the country banks do and do not do. And, what charges the city banks do and do not offer. I don't think the witness can testify as to what country banks think or city banks think.

THE COURT: Well, okay. I asked him what the basis of the competition was, that's all. And since there is not—I expect that there would be different requirements as to the

amount of deposit in order to give the whole range of services in different banks.

Is that right?

THE WITNESS: There is some, apparently.

THE COURT: But otherwise I expect it would be purely a matter of personal equations.

THE WITNESS: It appears from the surveys that have been done on this matter, it does appear that the—that the main competition is a service competition.

MR. METZGER: Objection, Your Honor. There is no such —before the witness testifies I would like——

THE COURT: How do they compete, do you maintain?

MR. METZGER: They compete on price, quality, service and continued sweat.

THE COURT: Well, that's about the same thing, I expect. I don't know why you should object. He agrees.

[650] THE WITNESS: Yes, I will——

THE COURT: Go ahead.

Q. (By Mr. Malasky) Well, Dr. Hall, in this connection I will show you Plaintiff's Exhibit in Evidence 192.

A. This states that it is a——

Q. Would you please explain what that is?

A. Well, it has the letterhead of the First National Bank of Denver. It states that it is an account analysis for the month of—to be filled in with the account number and the account—the name—It gives an earnings allowance and an implicit interest charge for the balance that the bank maintains and then it figures the various kinds of expense items. It figures the difference—whether this is a profitable account for the bank or a nonprofitable account. I would add that there is a problem.

The literature on correspondent banking speaks of the fact that it is very hard to allocate the activity of the bank to the individual accounts in the sense that there is a lot of joint or common elements involved and so these kinds of accounts—expense accounts are sort of worked by various kinds of rules of thumb and things like that—to give them sort of an overall picture. It's not really as I understand the matter, it's a management tool rather than—more than anything else.

Q. Well, now is this pricing arrangement—does it [651] —does this pricing arrangement have anything to do with the idea of the cluster or package?

A. Right. As I mentioned, the common elements are joint elements which are involved in the fact that you maintain a continuing relationship, is the reason for this.

Q. Now, Dr. Hall, based upon your experience, your studies of correspondent banking, your preparation for the trial today, the testimony today, and your listening to the various witnesses who have testified thus far, is it your opinion—or, would you state whether or not it is your opinion that the package of correspondent banking services presently offered by six correspondent banks in Denver constitutes an appropriate product market or line of commerce in which to measure the competitive effects of the proposed acquisition?

A. Yes, I think that the full package of services is the appropriate line of commerce.

Q. Now, Dr. Hall, does correspondent banking have an important economic function?

A. Yes, it's in a country which has a lot of banks—small banks which are either unit banks or small holding companies or small branch bank systems. The fact that these banks can obtain access to the facilities of large banks, facilities where there are economies of scale are important for making the system work.

Q. If these services aren't available, what happens?

[652] A. Either you have to produce them in house or degrade the product and producing them would be quite expensive.

Q. In your opinion, what determines a—the attractiveness of using correspondent services rather than doing this function, as you put, it "in house."

A. I think the services which are being offered, how good the services are, how good the prices are, and as Mr. Metzger said, how much sweat, product and price competition there is make a lot of difference. The more attractive the product being offered, the less attractive it is to produce it yourself.

* * * * *

[654] Q. Now, Dr. Hall, I would—I show you plaintiff's Exhibit in Evidence No. 201. What significance, if any, do you draw from Plaintiff's Exhibit in Evidence 201?

A. This shows as of the end of 1969 the percentage of the total deposits that six Denver banks obtained from other banks and it shows the deposits they obtained from Colorado

also a percentage of the total deposits, in the two columns. [655] Q. When you speak of total deposits, what do you refer to?

A. Total demand deposits.

Q. Total——

A. Excuse me, these are interbank demand deposits, the total.

Q. The second column—would you read the top of the first column and then the top of the second column?

A. "Total Deposits," and then "Total Interbank Demand Deposits From All U.S. Banks."

Q. So then the first column is the total deposits?

A. In that bank, yes, and the second column shows the amount of correspondent deposits. For First National Bank of Denver, for example, 13.3 percent. They received $46 million in interbank deposits from Colorado banks for a total of 9.2 percent. In other words, a little better than nine percent came from Colorado banks and a little better than 13 came from all banks taken together.

The First National appears to be slightly more Colorado oriented than the average taken together for the total of six Denver correspondent banks, the total of their—their average of their deposits from Colorado banks was seven and a half percent. The average from all banks was 12.7 percent. A sizable percentage of their deposits are interbank deposits and Colorado accounts for the lion's share [656] of those.

Q. Is there anything you can draw from the fact that that percentage of their total deposits is represented by interbank demand balances?

A. Well, it is a very important source, and since it is an important source of their deposits and deposits are the lifeblood of a bank, it is important. It is important to them.

Q. Now, Dr. Hall, I direct your attention to your earlier statement that location is an important attribute of services rendered by correspondent banks. I believe the term you used was that the demand was geographically specific. Could you elaborate on this point?

A. Well, yes, I would expect the correspondent banks in Denver to have accounts from banks all over the country who had representation locally, who had certain types of business to be done in Denver. I would expect you would have a great many accounts from banks throughout the mountain states, but then you are going to have a lot of—

as we saw from one of the earlier exhibits, almost every bank, all but four banks, in Colorado will have accounts in Denver, that these are for really different purposes. One is for national purpose and the other is for daily purpose.

Q. Well, does the fact that Colorado banks, the testimony has indicated, seek Denver correspondents to the extent that [657] they do have anything to do with your evaluation of an appropriate geographic market in this case?

A. Yes, I have considered the appropriate geographic market and it seems to me that an appropriate market is Colorado, the State of Colorado.

Q. And for what services?

A. For the full package of correspondent services. It is a different—for that product—for the product market or for the line of commerce, full package correspondent services, Colorado is the appropriate geographic market, an appropriate geographic market.

Q. Are there any other reasons which make Colorado a proper geographic market in which to assess the effects of this acquisition, proposed acquisition, on correspondent banking?

A. Well, I think you have to look at the—at a market as an integrated system of where suppliers sell and buyers buy. You have to look at both sides of the market. I guess the economics theory textbooks talk about a market as a locus of the supply and demand forces, but when you go to the empirical—really the empirical problem of identifying a market, you have to look for some kind of integrated set of activities, and I think what's very important here is you have to look at both sides of the market. You have to not only look at where the sellers, [658] say the six large Denver banks are trying to sell, but you also have to look at where people are going to buy and what they are buying, and as I said, there are—trying to identify these interactions, these integrations, it seems to me both economic and political factors tend to make Denver—excuse me—make Colorado the market for the Denver-based full package correspondent services.

Q. All right. Now, Dr. Hall, I would show you Plaintiff's Exhibits in Evidence 202 and 203, and would you describe——

THE COURT: Then you are saying then that the whole State of Colorado is a relevant geographic——

THE WITNESS: It is a relevant geographic market.

THE COURT: The relevant?

THE WITNESS: A relevant, I think. The most relevant. It is the one, I think, is the one for assessing, but there are some other——

THE COURT: So then the adverse effect on competition of this particular acquisition has to be weighed in terms of the whole State of Colorado?

THE WITNESS: I believe so, Your Honor.

THE COURT: Well, this wouldn't cause a ripple as far as the condition in the state is concerned, would it?

THE WITNESS: Well, I think it would, sir. I——

[659] THE COURT: I would sure be interested in having your explanation as to how it would.

MR. MALASKY: Your Honor, I think we are talking, of course, about the correspondent banking line of commerce.

THE COURT: I am asking him, if you don't mind, but you can— I know what you are talking about.

THE WITNESS: Well, I think it——

THE COURT: I mean we only have to consider the effects of the acquisition in question here, do we not?

THE WITNESS: Yes, sir.

THE COURT: In other words, in and of itself, it is going to have a consequence itself that is substantial?

THE WITNESS: That's right. I think, however, that the consequence of the Greeley merger, the amount, the impact, the quantitative impact of the Greeley merger,——

THE COURT: The trauma?

THE WITNESS: What?

THE COURT: The trauma?

THE WITNESS: I wouldn't go so far as to say trauma.

THE COURT: I haven't heard any explosions, really.

THE WITNESS: Well, the quantitative impact of the Greeley merger, I think, has to be taken in the context of the changes which are going on in the structure of the market for correspondent banking services in Colorado, and [660] I think——

THE COURT: Well, true, but——

THE WITNESS: Yes.

THE COURT: We still have to weigh it against the individually——

THE WITNESS: That's right.

THE COURT: And you can't throw any other things in the scale here when we are judging this question.

THE WITNESS: No, you are quite—yes, it has to stand——

THE COURT: We can look at it against the framework or against the—it may give us some perspective, but it won't help the weight of it any. It won't give it any more explosive power.

THE WITNESS: Well, I think the issue here is the——

THE COURT: You tell me.

THE WITNESS: ——is the effect. Well, I am—in a vertical acquisition, I think you have to take a look at how important this foreclosure is compared with, viewed in the context of the whole market, of the whole structure in the market.

THE COURT: Check.

THE WITNESS: Right. I think also, too, you are going to have to look at what are going to be the likely reactions of other bankers to this kind of thing happening [661] and what are the alternatives that are available. In other words, I think that you have to try—the question is is this foreclosure a matter of great importance considering the other alternatives and considering what are the likely reactions to it, for example——

THE COURT: Well, for example, will it change the relationships of other country banks towards the First National Bank of Denver?

THE WITNESS: I think that it removes——

THE COURT: Will it close the doors to some of them?

THE WITNESS: What? The other country banks?

THE COURT: Yes.

THE WITNESS: To getting access to the bank? No, I am not really concerned about that relationship.

THE COURT: What's the practical effect?

THE WITNESS: I think the real question is——

THE COURT: What's the practical effect?

THE WITNESS: What is the practical effect?

THE COURT: Yes, something we can notice.

THE WITNESS: Okay. The practical effect is that here is a very attractive correspondent account for correspondent banking services. If this account and similar accounts like it pass from the open sector of the market for correspondent accounts to the closed sector, that is, they [662] become captive accounts, the attractiveness of correspondent banking goes down. The attractiveness of this to entry of new banks, large banks offering correspondent banking services, goes down. The attractiveness of competing in this market for large accounts by large banks goes down.

THE COURT: You mean as a result of this one——

THE WITNESS: As a result of the one taken in context with what else is happening in the market and with the other acquisitions that have occurred or are in the process. [663] THE COURT: Assuming we can weigh those with this?

THE WITNESS: Right, assuming you can——

THE COURT: If it stands alone, why, your answer would be a little different, I guess.

THE WITNESS: Well, if you stand alone, I think it is, you know, an amount. You have to—well, there is, I guess, an old joke in the trade——

THE COURT: Well, I mean as far as the merits of this case are concerned.

THE WITNESS: There is a joke in the literature on vertical invasion about the fact that an inch makes a lot of difference whether it is on the end of your foot or the end of your nose, but I think it is an inch——

THE COURT: Well, I have heard the joke before, but it doesn't really shed much light on this question, but we are dealing here with a specific and necessary—have you read the complaint?

THE WITNESS: Yes, sir, I am aware of it. I understand Your Honor's question. There are some later exhibits that I think will provide the numbers that will serve as the basis for discussing the issue perhaps a little more precisely. If I could defer until that point——

THE COURT: Well, you can do anything you like. I just wanted you to point out some practical consequences [664] in terms of the matters that are charged in this complaint, that's all.

THE WITNESS: Right.

THE COURT: I haven't heard them yet.

THE WITNESS: Well——

MR. MALASKY: Your Honor, we will proceed, I think, to that point in just a few minutes if——

MR. WILLIAMSON: He was about to say something, weren't you?

MR. MALASKY: Go ahead.

THE WITNESS: No.

THE COURT: Okay.

Q. Dr. Hall, you have Plaintiff's Exhibits 202 and 203?
A. Yes.

Q. Would you please describe to the Court what these exhibits show?

A. Well, they show for the—they are exhibits for two different dates, one for December 31, 1969. That's PX-202. And one for August 31, 1970. That's PX-203. They show for the six Denver banks offering correspondent services the amount of their deposits, which represent demand deposits from Colorado banks and demand deposits from banks outside of Colorado. Over an average, using the figures for December 31, 1969, PX-202, the Denver banks had about 60 percent of their deposits from—came from interbank [665] deposits, came from other Colorado banks, about 40 percent from outside Colorado. First National Bank of Denver was a bit higher, 70—69 and 31—figures for—excuse me.

[666] The figures for 1970 are roughly comparable. Each table presents these both in gross form and also by subtracting the deposits from the affiliated banks of the holding companies.

Now, this reflects, I think, the importance of the Colorado banks but I think it overstates it because it shows all correspondent banking services and if you are talking about this kind of full range services, that the correspondent banks provide the Colorado banks, you really are talking about a sub-set of these numbers so that the percentage figures here really underestimate the percentage of the demand for full package services that come from Colorado.

As Mr. Metzger in his opening statement pointed out that banks with a lot of national business will show a low proportion of local assets. But this doesn't necessarily decline the market because in this case the products are really different.

Q. Dr. Hall, did you say that this overstates or—maybe——

A. Excuse me. It understates. Excuse me.

Q. I just wanted to make that clear.

A. I got my signs wrong, one of my problems with statistics.

Q. Now, Dr. Hall, do these figures square with your testimony about the fact that Colorado constitutes an [667] appropriate geographic market in which——

A. I think it's really what you would expect. I mean these banks are doing a large national business which is

the reason that they show up for—they have a considerable number of their deposits from outside Colorado. But, they do a very large Colorado business in these sort of broad range services.

Q. Now, Dr. Hall, would the geographic market for retail banking services necessarily be the same as the market for correspondent banking services?

A. No. I think it would be generally different. Most markets for the sort of services that banks render individuals, partnerships and corporations, personal customers, are less than state or they might be multi-state if you're in a national market, but this is very seldom.

Q. Is it usual to define a market in state boundaries?

A. Not usual but retail business—in terms that business they do to people—but for the market, for services that are sold from bank to bank, I think the state boundaries do have some very important consequences because with our dual banking system state laws tend to define an awful lot of permissible interbank relationships. Banks also have to deal with tax laws, state tax laws. They are involved with state property laws. The legal and political administrative and regulatory aspect becomes much more important in terms of [668] interbank relationships and therefore make political boundaries more significant than they are in the retail end of the banking trades.

Then of course there is the convenience. It is not just the market. The market isn't defined just politically. I think that's an important consideration for interbank dealings. But, there is also the convenience factor. As the witnesses who spoke this morning testified to, that is an important economic consideration.

Q. Dr. Hall, how would this proposed acquisition with respect to the correspondent aspect of the case be classified in terms of economic molels?

A. Well, the technical term for it is a forward vertical merger or forward vertical acquisition, which says that a seller is purchasing a customer in—or a potential customer and a simple analogy would be an apple grower buying a fruit stand. The reverse would be backward vertical integration, where a fruit stand operator would buy an apple grove.

Q. Analyzing the effects of a vertical merger acquisition, what factors do industrial organization economists generally take into account?

A. As I was saying a few minutes ago, I think the important things are the structure of the markets involved. It's very unlikely—very difficult to concede that a merger of this apple grower with a fruit stand would have any economic [669] consequences.

On the other hand, simply given the fact that the apple growing is very competitive—fruit stands are very competitive industries, easy to get into, low requirements. But, if you're talking about an industry, well, which has a very highly concentrated—difficult entry, and, like, say—say, gasoline refining. Petroleum refining, buying a chain of gas stations. Now, that's the—those are the sort of industries where it is possible that vertical integration—or you worry about vertical integration.

The point is that from an economic standpoint vertical integration doesn't create market power. It extends it. It can amplify it. It can protect it. But it's a multiplier. And, you worry about multipliers in areas where firms have a lot of market power to begin with. And so that's why I said that the most important consideration is the structrue of the market.

Q. Well, does the structure of the market have anything to do with the performance in that market?

A. Yes, I think the whole concept of price theory in economics and as has been borne out by many empirical studies is the kind—the numbers of firms, the size of firms, the ease of entry. These are matters all of which tend to determine the performance of the market. Performance—by performance I mean things like prices, investment rates, rates on innovation, [670] the outcomes of the market.

Q. In this regard I would show you Plaintiff's Exhibit in Evidence 204 and 205. Now, Dr. Hall, can you for me from these exhibits describe the structure of full range correspondent banking business as provided by the Denver correspondent banks in Colorado?

A. Yes, sir. These show the interbank deposits of the six Denver banks. The leading bank, First National Bank of Denver, did 37 percent of the business. The two largest, First National and United Bank did about 59 percent. I'm using December 31, 1969 figures. The three largest did, oh, about 77 percent. The big four, or the four largest did almost 88 percent. Somewhat under. There were, as I said, there are six banks as we have said a number of times, but the sixth, the Security, as we have heard only does about

one percent of the business. This was a de novo bank in 1963. It would be, I think, qualified under the heading of an entrant rather than a powerful force in the market. It's a small number in a concentrated market.

Q. Is there any term in industrial organization economics that used to characterize a market in which there are a small number of firms engaged?

A. Yes, the technical term is oligopoly.

Q. Now, a moment ago you indicated that one of the factors to take into account in analyzing the structure of the [671] market as that has to do with the conditions of entry. How would you describe, based upon your studies and your preparations for this case, do you have an opinion as to the conditions of entry into full service correspondent banking?

A. Yes, I have an opinion.

Q. Would you state that opinion?

A. Well, I think that entry is difficult in the sense that you have to be prepared to mobilize sufficient resources to provide the business, to be able to handle the sweat required, as was said. But, in other words—and to make the kind of investment which allows you to offer this sort of service.

However, while entry is difficult, it clearly is not impossible or blockaded as is evidenced by the fact that Security National Bank has gotten a foothold in the market and appears according to the testimony we heard this morning to view the matter with optimism. So I would say it's not like setting up a fruit stand. But, on the other hand, it doesn't appear to be impossible.

THE COURT: Do you mean in the Greeley area?

THE WITNESS: Well, no, I mean for Denver to set up a Denver bank—a Denver bank to go out and offer correspondent services to people such as the Greeley bank. If we look at the other side of the market, the buyers of correspondent services, here there is of course a lot more competition [672] throughout Colorado.

THE COURT: Well, Colorado National Bank apparently had the business up until a few years ago.

THE WITNESS: That's right. And whether Security—I doubt that Security National could get the Greeley business, now. In terms of size they are not—it would almost double their volume of business, and, you know, now, of course, it's not likely that they would get the business.

THE COURT: This is going to be dependent upon their ability to oftentimes carry these overline loans. This is the crucial issue, isn't it, in a situation like that? In other words, if the correspondent bank cannot cut it they're going to find another one that can, is that right?

THE WITNESS: That's right.

THE COURT: I mean, that has more resources, is that correct?

THE WITNESS: Not only the overline loans but to provide the other services.

THE COURT: So all the show and airplane ticket service and hotel reservation services in the world isn't going to save an account like that.

THE WITNESS: No.

THE COURT: I mean, if you need overline loan service you're going to get the institution that will furnish it, I suppose.

[673] THE WITNESS: That's one reason why I don't think Security right now is an effective competitor for the size account such as Greeley is. They're not a very large bank to begin with and also in terms of servicing the accounts. They've got four people. You know, that's not very many people to handle a lot of accounts or big accounts compared to, say—

THE COURT: So there is really a limit as to how much competition there's going to be anyhow, I suppose, in this area in commerce?

THE WITNESS: I think there are a lot of banks which are fairly good sized and who can handle it besides.

THE COURT: You mean when you get to a bank that has got capital of $50 million?

THE WITNESS: That's right. Security is a pretty small bank to try to get in. But there are banks——

MR. METZGER: Your Honor, Security is a member of a $150 million holding company.

THE COURT: I'm not talking about Security. I wasn't at all.

THE WITNESS: Well, to the extent that they can draw on the holding company assets, of course, just makes it much easier.

THE COURT: I was talking about the Greeley National. Isn't that about the size of it?

THE WITNESS: Yes, but Greeley National would be for [674] this purpose a consumer of correspondent services,

not likely to be an entrant into the—as a seller of services.

THE COURT: No purchaser or the First National Bank of Greeley, which is fairly close, isn't it, to Greeley National?

THE WITNESS: About the same size. But, these are firms that purchase correspondent services. They're very good accounts. A big bank. And also a big bank like this would consume a lot of correspondent services. Because, they will have a lot of overline loans. They will have, you know—they just generate a lot of business.

THE COURT: Well, Greeley was—I don't know what—but the mere fact that the First National of Greeley is acquired by Bancorporation doesn't mean they're not open for other business, does it?

THE WITNESS: You mean as a——

THE COURT: In the same area.

THE WITNESS: You mean the people?

THE COURT: It won't close them down. It doesn't foreclose their taking on other customers?

THE WITNESS: No, they could take on others but I mean—who will they buy correspondent services from in Denver? I think they will buy it from First National Bank of Denver.

THE COURT: You mean Greeley?

THE WITNESS: They're not a very attractive [675] account. What I am saying is that—let's say a Denver bank Security National wants to go out and sell correspondent services. Greeley National—or excuse me. The First National Bank of Greeley would not likely be an attractive customer simply because of their ties to the First National Bank of Denver. In other words, you won't go out and—I don't imagine very many banks are looking towards the First National of Greeley as an attractive customer at the moment. I'd be surprised if they were.

THE COURT: That's the only place where the rub comes then?

THE WITNESS: That's right. In other words, we are looking for what effect it has on people who want to sell correspondent services to banks such as Greeley. That's the kind of an effect which I am concerned with.

THE COURT: You mean maintaining competition among these six banks, is that right?

THE WITNESS: Well, and maintain the possibility for some other bank to get into the business; keeping the market

for correspondent services attractive and competitive by keeping it——

THE COURT: Well, what you're really saying though is that the holding company setup should be brought to a halt by court action, is that right?

THE WITNESS: No, sir. I'm not. I am all for [676] holding companies.

THE COURT: You mean there might be some who will be tolerable?

THE WITNESS: Indeed. I think that's the point. It depends on how holding companies expand.

THE COURT: None of them that we have got in front of us?

THE WITNESS: No, because the thing that is interesting to me about the acquisitions that are happening is that they are picking up the really good accounts, the choice outlets. The holding companies—there has been de novo expansion by holding companies which of course increases, and there have been acquisitions of banks which were not banks in the prime range of buyers of correspondent services. The recent proposed acquisitions have all involved very choice accounts as correspondent banking services.

THE COURT: You wouldn't say the National State Bank in Boulder is a prize, would you, at this point?

THE WITNESS: Let's see. The National State Bank of Boulder——

May I refer to an exhibit?

Q. Exhibit 209 in evidence.

A. Plaintiff's Exhibit 209 in evidence shows the year end balances of the National State Bank of Denver (sic)——

Q. Boulder.

[677] A. In their correspondent banks—the balances they carry with correspondent banks, and they were in 1969, out of 217 Colorado banks, that is, excluding the six Denver correspondent banks, they were the 21st largest account. In 1968 they were the ninth largest buyer of correspondent services. In 1967 they were fifth and in 1966 they were ninth. In 1965 they were 12th. And so that, you know, and —recently they have dropped quite a bit. But, over the past few years—well, I might go on—in 1964 they were 19th, and in 1963 they were 22nd. So they're back down to where they were before.

But, even 22 or 21 out of 217 is, you know—that's one

of the larger correspondent accounts. And at one point they were fifth, the fifth largest correspondent account in the state. I think that's probably—they were probably playing over their heads.

Q. You said National State Bank of Denver?

A. National State Bank of Boulder. Excuse me.

THE COURT: I know what you're talking about.

A. The National State Bank of Boulder.

So that while this was, you know, a large account—if you take a look at——

THE COURT: Well, I quit. That's all right. I have learned my lesson. I'll not——

THE WITNESS: Excuse me, sir. I just meant to be [678] responsive.

THE COURT: I think that's the best thing I can do is to just relax and enjoy it. I don't think I'm going to get any specific information anyway. Doesn't look like it. That's my only quarrel; is that all we get is a lot of theory, you know, and generalities, and as I have indicated a few times, I am sure anxious to get some specifics and some showing as to how it's going to adversely affect competition in the particular area where we are. That's all.

MR. MALASKY: May I proceed, Your Honor.

THE COURT: By all means. Help yourself. Do it your own way. I'm sure you're going to convince somebody. I don't know whether it will be me though.

[679] Q. Well, Dr. Hall, in this connection I would show you Plaintiff's Exhibit in Evidence 206, 207 and 210. You have already discussed 209. Would you just generally state what those exhibits in evidence indicate?

[680] A. They show for First National Bank of Greeley, for the Security State Bank of Sterling, for 209, being the National State Bank of Boulder, and for 210, Colorado Springs National Bank, their rank as a buyer of correspondent services during these years, and if we take 1969, the last year, as a buyer of correspondent services, Colorado——

THE COURT: State Bank Boulder?

THE WITNESS: May I have a word with——

THE COURT: Sure, go ahead.

(Counsel and the witness conferred.)

A. (Continued) I had a note which I needed to change. Colorado Springs National Bank was twelfth largest. The

National State Bank of Boulder was the 21st largest. The Greeley is 29th and the Security Bank of Greeley was 41st as a buyer of services, so that was one of the smaller, but the point I was making was that the Greeley acquisition was similar to the others in the sense that they have involved fairly sizable correspondent accounts viewed by the size of the business in Colorado.

Q. Dr. Hall, I would ask you to examine Plaintiff's Exhibits in evidence 211 and 212, and would you please describe what those exhibits show.

A. These exhibits get to the point that I was speaking of earlier in terms of the importance of the Greeley—First National Bank of Greeley, the Security State Bank of Sterling, [681] the National State Bank of Boulder, the Colorado Springs National Bank, as sizable accounts relative to the business which the six Denver banks get from Colorado. If you look at 211, which is Plaintiff's Exhibit 211, which is for August 31, 1967, and we take for example, the First National Bank of Greeley or let's just take the First National Bank of Greeley, they have in all, the six Denver correspondent banks together, they had $1,205,000 deposited. Now, assuming, and this is an assumption that overstates the case because the banks don't keep all their accounts even in their prime Denver correspondents as we have seen, but let's for a moment assume that a single bank got all of it. This would amount to about 3.3 percent of First National Bank of Denver's Colorado business. It would amount to about 5.3 percent of United Bank of Denver's Colorado business, about 5.2 percent of Central Bank and Trust's business. Colorado National, which used to be the prime correspondent, it would be 13.4 percent of its Colorado business, and for American National it would be 19 percent, 19.3.

I said it would almost double Security National's business. It would be equivalent to 92.9 percent of their business. The point is—and 212 simply shows as for December 31, 1969 it gives much the same picture. The point is that the Greeley account is a large account relative to most of the accounts that come out of Colorado.

[682] Q. Now, Dr. Hall, you stated that absent acquisition the bank would not have or carry all of its correspondent accounts in its prime account. Do you have any other evidence which indicates that that is the case?

A. Well, I would go back to Plaintiff's Exhibit 29, which

is interrogatory No. 25, which shows that over the period '67 through '70 the Greeley State Bank did vary its accounts. For whatever reason, around the time of the acquisition, they switched.

Q. Did you say Greeley State?

A. Excuse me, First National Bank of Greeley, right. Please excuse me; First National Bank of Greeley. They did vary somewhat their use of the Denver correspondent, and so, you know, I feel that these are not immutable relationships, and we saw that the relationships changed when the corporate ownership changed and I assume that they could change for some other reasons.

Q. Dr. Hall, I now show you plaintiff's exhibits in evidence 213, and would you please describe what Plaintiff's Exhibit in evidence 213 indicates.

A. Well, this exhibit purports the point, which is that the banks which are being acquired or proposed to being acquired are significant banks in important parts of the state. There are three columns on this exhibit that I think are of interest. One is the third column and the eighth [683] column—the third column, which says "Rank in State," which gives the rank of the city in the state by population; Column 6, which shows the ranks in that city, how the particular bank compares in terms of size of its total deposits; and Column 8, which is the figure I have used again before, the rank among all Colorado banks in terms of their correspondent demands. Well, what you see in terms of Column Number 3, "Rank in State," is that these are the—they are not picking up banks in little hamlets. They are picking up banks in major cities.

On Column 6, "Rank in City," they are generally not picking up the tail end of the banks. They are picking up the number 2, number 3, and in a couple of cases number 1 banks, and I think in terms of the rank among all Colorado banks, in terms of the size of their accounts, what I did was the ten banks on here I divided them into quartiles. Seven where in the first quartile, the top 25 percent. One was in the next quartile. That is, 8 were in the top 50 percent and only 2 were below average in terms of their correspondent balances. Is that——

Q. You stated that this is the rank among all Colorado banks?

A. Excuse me, excluding the six Denver correspondent banks.

Q. And just from the title of this, where are these [684] banks located?

A. These banks are located in major Colorado cities outside of Denver and its immediate suburbs.

Q. I will now show you, Dr. Hall, Plaintiff's Exhibit in evidence 214, and I would ask you to describe what that exhibit indicates.

A. This exhibit shows for the holding company subsidiaries in the Denver area, that is Denver and its immediate suburbs, the same kind of information which Plaintiff's Exhibit 213 shows, and here there are 13 affiliates. These are large accounts. These two are generally large accounts in terms of their correspondent demand. Of the 13, 4 ranked in the first quartile, 2 ranked in the top or next quartile, so 10 out of the 13 were above average and 3 were below average.

Q. Now, Dr. Hall, is there any significance to the fact that the present proposed affiliates of the six Denver correspondent banks ranked among the top users of correspondent services in the state?

A. Well, as I indicated, tried to indicate earlier, these are the choice accounts. The choice, you know, large, attractive correspondent balances.

Q. And what significance does the fact that they are the choice accounts have?

A. Well, I think the significance is that you can't [685] just look at the number of accounts that are passing from the closed to the open sections. The fact that the accounts that are passing are somewhat—are larger, you know, they have a more than—it is more than the numbers.

Q. Did you say from the closed to the open?

A. From the open to the closed.

Q. Well, now, Dr. Hall, does an increase in forward vertical integration have any effect on the relative ease or difficulty of entry of new firms into a market or business?

A. Well, the point I was trying—yes, as I was saying before, depending upon the kind of market structures which you have, vertical integration through merger can lead to increasing the barriers to entry. It can do it in several ways. One is a problem of foreclosure, so-called percentage effect. What would happen is, let's say, you had 200 firms. You were a supplier. You are selling to 200 firms, all about the same size, all potential customers, and you need 20 of them to run an efficient business. You would have to get

1 in 10. If you were going to move into the market, you would have to figure that out of every 10 customers, I have got to get 1.

But let's say you have 3 firms that do all the business as customers and you have to get 1 of the 3 to be in the business, so the fewer number there are relative to the number you need to get the economies of scale, the [686] more difficult entry is. Of course, the only other way, if you have got just a very thin market out there, the only other way to get into business is to build your own, but this greatly increases the capital that's required to get in that business.

Q. Now, moving along, Dr. Hall, I next ask you to look at Plaintiff's Exhibits in evidence 215 and 216.

MR. METZGER: Your Honor, may I ask that the title of this exhibit be explained to me?

A. Shall we start with 215?

Q. Yes.

THE COURT: First, the title.

A. Right, that's one of the hardest parts.

THE COURT: Did you prepare this?

THE WITNESS: No, sir.

MR. MALASKY: Your Honor, I take credit for any failures in titles.

THE COURT: Maybe you ought to explain it.

THE WITNESS: I have promised a little course in——

MR. MALASKY: I was afraid this was going to come up, Your Honor. I think if you read the top line as just with sort of two dashes after it, "Colorado Affiliates of Six Denver Correspondent Banks,—— and this shows what their interbank demand deposits which they held in six Denver banks were as a percentage of total [687] interbank demand deposits from all Colorado banks in those six Denver correspondents on the two dates involved.

MR. METZGER: I give up, Your Honor.

THE WITNESS: That's one of the lest confusing things about this table. I have some real reservations about the statistical——

THE COURT: I don't think there is any hazard that I will understand it.

THE WITNESS: That presents—may I accept the challenge?

THE COURT: All right.

THE WITNESS: What this shows is that of the current affiliates of the correspondent business that is now being accounted for by affiliates that are what I have been referring to as the closed portion of the correspondent market, now that compares to the total of all the correspondent business, so look at the end of the first column of figures. Ignore all those figures up there and go down to the bottom, and it says that there is $99 million in business from Colorado banks in the six Denver banks. Let's call it $100 million. I have been in the military game, so we round to billions.

Then we take for each bank, for each of the big Denver banks, it shows how the interbank demand deposits of [688] that bank's affiliates compare on a percentage basis. The First National Bank of Denver's affiliates, for example, account for $1,714,000, or about 1.7 percent of the whole business.

THE COURT: These are holding company affiliates?

THE WITNESS: Right, so it is saying that of the correspondents which the holding company has developed or acquired, they account for about 1.7 percent of the correspondent business.

MR. METZGER: I beg your pardon; I didn't think I heard that properly. Could I have that read back?

(The reporter read the witness' last statement aloud.)

MR. METZGER: I don't believe the holding company has acquired anyone, Your Honor.

THE WITNESS: Pardon me, I stand corrected. First National Bank of Denver's affiliates.

MR. METZGER: The de novo affiliates, is this what we are referring to?

THE WITNESS: Yes.

MR. METZGER: Okay.

Q. Why don't we just go down to the bottom.

A. 12 percent. This says that about 12 percent of the market is closed in the sense that they have ownership ties.

Q. And as of December 31, 1969, the figure was—

[689] A. 8.8.

Q. Okay, I now show you, Dr. Hall, Plaintiff's Exhibits in evidence 217 and 218, and would you please describe what these exhibits show.

A. These are tables which are similar to the last two

exhibits that we just discussed. They show relative to the correspondent business——

THE COURT: What are you on now, 217?
THE WITNESS: Let's take 217.

Q. Why don't you explain it column by column? It may be easier for the Court, too.

A. All right, 217, which is as of August 31, there were again 99 million, 100 million roughly, in interbank demand deposits from Colorado of the six Denver correspondent banks. Assume that First National Bank of Greeley were acquired by the defendant. This would involve a movement of about 1.2 percent of the demand deposits, or a foreclosure, that is a conversion of this from a customer-seller relationship to some kind of ownership relationship. Likewise, for Security, we are talking about 8 percent if we rule out the excuse me, .8 percent, excuse me—National State Bank, 2.5; and so on, for a total of 4.9.

If we take and express this instead of using the total demand deposits, if we exclude the Colorado affiliates, we are dealing with a base of 87 percent, 87 million, almost [689(A)] 88 million, and on that basis the amount of foreclosure involved in the Greeley acquisition would be 1.4 percent.

If you take this in the context of the four possible acquisitions shown here you are talking about 5.6 percent. This goes to Your Honor's point earlier of what are we talking about.

Well, if we are talking about the First National Bank of Greeley, we are talking about a market foreclosure of about 1.2 percent, or 1.4 percent, depending on how you consider it. If you take this in context with the others, you are talking about a foreclosure of 5 percent, something of this sort.

Q. Now, Dr. Hall——

THE COURT: Well, I don't think that even the government maintains that you can just add them up.

THE WITNESS: Well, I think in terms of the——

THE COURT: You might be able to. In the final analysis, you can.

THE WITNESS: I have not been thinking of the matter from the question of legal aspects of it. I have been approaching it and trying to determine what this merger means to me in terms of what's happening to the Colorado

market, so, you know, I understand very much that I am—I completely understand the legal point as you have expressed it to me. It has been very clear, but what I have been [689(B)] trying to do——

THE COURT: If you are going to consider this in this context, you are going to have to consider the trend that has been going on for ten years, I suppose.

THE WITNESS: That's right.

THE COURT: We are involved in that.

THE WITNESS: That's right, and I have been trying to——

THE COURT: We can't be divorced from it, so I suppose the present situation is—I mean, you just can't take that part that will help the plaintiff's case and divorce the rest.

THE WITNESS: No, sir.

THE COURT: I don't think that——

THE WITNESS: No, sir you are quite right.

THE COURT: I mean, that poses—we take a situation as it comes. If we are going to weigh these, I suppose we are going to have to weigh all the rest that have gone before.

THE WITNESS: Well, I think we did try to look——

THE COURT: This is a condition I suppose that there is no wrong, no wrong period of time.

THE WITNESS: You see, the question that's important here is whether this is making correspondent banking business a less attractive market. Is it cutting down? What is this [689(C)] doing to the market?

THE COURT: It is already cut down, is my point.

THE WITNESS: That's the question about my apple stand. You don't worry about it in terms of an apple stand——

THE COURT: Lock up the barn now that all of the horses have escaped. We have only got a couple left and we want to lock it, I suppose.

THE WITNESS: Well, I guess I think of it in terms of the —when you get to the point of whether these are important, if you have got sort of a—well, my apple stand, if you have got a hundred thousand apple stands, you don't worry about a bunch of those disappearing. If you have got a very small or a fairly small number of very choice kinds of accounts, their passage from being in a position where people can compete for their business, can try to get them out, their passing into an ownership relationship through vertical acquisition becomes important, so that my feeling about the past trend is that you do not worry about it until these become important, and then you do begin to worry about it.

THE COURT: Well, I think you have got a very convenient way of thinking about it.

THE WITNESS: Well, I—I am not—

Q. Dr. Hall, I now show you Plaintiff's Exhibits 219 [689(D)] and 220 in evidence. Would you please describe what these exhibits indicate.

A. Right, these are headed "Pro Forma." They simply show what they—they simply add up the last two tables. That is 219 shows for August 31, 1970, the amount of business involved in what I have called the closed portion of the market that's involved, considering both the past—excuse me, the present affiliates. The total for 219 is 16.9 percent. We would say then that about 17 percent of the market was sewed up by ownership relations. And Plaintiff's 222—

Q. 220.

A. 220, excuse me, does the same thing for December 31, 1969. The amount in the closed section here involved 13¼ percent.

Q. Now, Dr. Hall, what does all this mean in a practical sense?

A. Well, I think that it can have three different effects in a practical sense. First was the one that I talked about before the more business you have in the closed sector of the market, the less attractive an area this is to enter.

THE COURT: But basically, if this acquisition is permitted to continue, it removes the First National Bank of Greeley as a potential customer?

[689(E)] THE WITNESS: That's right.

THE COURT: Basically, isn't that it?

THE WITNESS: That's right. And, this makes the market—to that extent, I think it's less attractive. As I say, as I have tried to say before the importance of this depends on how many other attractive customers there are in the open market sector but it seems to be—attractive customers seem to be getting a bit scarce. The second thing that it can have is not only an effect on the attractiveness of new—of the economy but the attractiveness of aggressive competition by firms already in the business. That is, if you've got a lot of attractive customers out there that—that you have the opportunity to compete for, it's just a lot more attractive market than if everything is sewn up by ownership. The third thing is that the possibility of——

THE COURT: Well, do you think that the quality of the service will deteriorate?

THE WITNESS: I think that is a real possibility. You know, it's just a less attractive kind of business. You put your best people in. Do you really push it? That is an area that depends on——

THE COURT: Well, that's the only consequence that we could be interested in.

THE WITNESS: Well, Ithink the first is also a consequence, that you can be interested in. I think that is [689(F)] the consequence that one can be interested in. I think there is a third possibility that sometimes happens in these areas. You get a triggering reaction. What happens is that when you've got a small number of sellers, like this, who derive an important percentage of their business from some areas and firms in that area that starts being acquired, that you set off a kind of merger wave that has no real economic significance but is simply defensive reaction to protect one's business. We have seen this in other industries I think. And in which let's say you've got six firms in each that do 15 percent of the business out there. Well, if one firm starts buying up two or three customers, this may not be a terribly important thing in itself, but you can get the people who had been selling to them worried that they could lose all their business so they figure they better assure their market position by doing some buying, too. And what can happen is that pretty soon you get a completely vertical integrated structure that was not really dictated by any economies of scale or great desire for improvement. Was simply a set of defensive reactions.

THE COURT: Well, we do have to think in terms of consequences that are probable, because this is not a per se type of thing.

THE WITNESS: No, indeed, not.

THE COURT: In other words, there has to be pragmatic—

THE WITNESS: —assessment of what is, and, you [689(G)] know—this is not the kind of thing that you can put in some sort of computer model or something and it reads out a precise signal. But, as much as I have been able to assess it I think there are some—this Greeley merger taken in context with else is happening in the structure is likely to have some seriously substantially adverse impacts on the competitiveness of the market for correspondent banking services.

THE COURT: But, in other words, there can be no gain in saying that the Greeley or the First National Bank of Greeley is removed as a customer so far as other—that is, the full—for the full range of correspondent services. It maintains accounts in other banks.

THE WITNESS: That's right. And the problem is to interpret, you know, how important removing that customer is from the general competitiveness of the market and that was what I had tried to do.

MR. MALASKY: Your Honor, I have no further questions of Dr. Hall.

THE COURT: We will take our afternoon recess then. We will be back in about 15 minutes.

(Whereupon, the trial recessed at 3:23 p.m. and resumed at 3:44 p.m.)

CROSS-EXAMINATION

By MR. METZGER:

Q. Dr. Hall, I think it's time we put correspondent [689(H)] banking in some kind of perspective. How many employees are there of the First National Bancorporation and its subsidiaries?

A. I don't remember, sir.

Q. How many employees are there of the First National Bancorporation's correspondent banking department?

A. I read that number someplace but it escapes me.

Q. Would you be surprised if I told you the two numbers, 1,300 for the bank, and 15 for the correspondent banking department?

THE COURT: How many now?

MR. METZGER: Thirteen hundred employees in the bank of whom 15 are employees in the correspondent banking department.

THE COURT: Well, he said would you be surprised?

THE WITNESS: No, I would not be surprised.

Q. Now you said that the account in Greeley, the First National Bank of Greeley would be a very attractive account because a million dollars is a lot of money. Something in words to that effect, is that right?

A. I stand on that.

Q. Now, let's assume that I have an account of a million

dollars with a correspondent who does my check clearings. About what proportion of that million dollars would be allocated to uncleared items, uncleared funds, uncollected funds?

[689(I)] A. Yes. I know what you mean. I understand your question. You know you're asking me——

Q. Roughly?

THE COURT: At any given time?

MR. METZGER: Yes, any given time. Any average bank with a million dollars.

THE COURT: In other words, it would be the average surplus over and above committed funds?

MR. METZGER: Yes, Your Honor.

THE COURT: At any time?

MR. METZGER: Right.

THE COURT: What percentage?

THE WITNESS: Of uncleared——

Q. What would be left after uncollected funds?

A. I don't know.

Q. Any bank? Would you say 20, 25 percent?

A. I wouldn't even hazard a guess.

THE COURT: Well, this would bear on the amount of profit.

THE WITNESS: Right. Well, another way to figure it is to take what a million dollars—what would you pay for time money or what the next equivalent amount—what the next source would be of that kind of thing.

Q. I don't think I made myself clear, Doctor. If I had a million dollars in time money I would have it all. If [689(J)] I had a million dollars in correspondent accounts I would only have about 20 percent of it, wouldn't I, to start with?

A. You're saying the net after you take out the float?

Q. I have to pay as a correspondent bank, I have to pay these uncollected funds. Now, that leaves me out of that million dollars maybe two hundred thousand to work from?

A. Well—

Q. All right. And do you have to take a reserve from that two hundred thousand?

A. You have already taken 17 percent reserve off earlier.

Q. Before uncollected items?

A. Well, you've got the reserve.

Q. Then we take off the reserve figure. Now, of this several hundred thousand we have left, what responsibilities do we have towards functionalism, assuming that the function being performed is the processing of check items?

A. If I understand your question correctly, you mean there is some expenses involved in the check clearing process as a result of this?

Q. Right.

A. Yes.

Q. Now, against the earnings on this two hundred thousand I have to charge——

A. I don't what the amount would be.

Q. Now, if we're talking about balances of this [689(K)] proportion, a million dollars, coming down to the earnings on two hundred thousand and having processing costs on check clearning, there wouldn't be room for very much else, would there? Loan participations? Any other services you might offer?

A. Well, you will be—you'll have earnings. You'll have earnings on loan participation.

Q. You're talking about earnings, say, on five percent of two hundred thousand.

A. Well, what? You mean in addition to what you will earn on paper itself? Is that right?

Q. You think you're earning anything on uncollected funds?

A. No.

Q. We're talking about five percent earnings on two hundred thousand dollars—roughly four thousand dollars.

A. Whatever it is.

Q. And that has the function to perform——

MR. MALASKY: Object. It's ten thousand dollars, I believe.

Q. All right. Ten thousand. And has a function to perform—

MR. MALASKY: We're assuming that's the figure.

THE WITNESS: You would be carrying overhead.

Q. Paying expenses?

[689(L)] A. Overhead expenses and profit, sure.

Q. So just for that function alone a million dollars isn't necessarily very large, is it?

A. No, sir.

Q. Nor necessarily very profitable?

A. No. But, I mean, the fact remains that on a million dollar account, if you're a bank—a bank using some kind of fairly sophisticated analytic review, you would request sufficient deposits to cover the services that you render. You know, this is not going to—it's not free. Please, I have no illusion that it's free or that this is any kind of a manna from heaven; they earn the money.

Q. We're just trying to come up with where this million dollars came from and where it goes to.

Now, loan participation is another substantial item having to do with balances, is that correct? If a country bank wants a substantial participation on a standby capacity he is expected to have some balances to do that, is that right?

A. (Nods affirmatively)

Q. And I think it's fair to say that loan participations are something that we can get from banks all over the west, everybody is knocking on everybody's door for that business, isn't that correct?

A. I don't know how actively they're soliciting. I have no knowledge to that. I know that certainly the bank [689(M)] records I have looked at have shown that many banks do have participation over a wide area. How actively they solicit I have no idea.

Q. As a matter of fact the Denver banks have about 40 percent of their business outside of the State of Colorado, is that correct?

A. Yes, roughly the number I used.

Q. Now, then,——

THE COURT: Am I to understand—assume one million dollars in these deposits, that 80 percent of this will be moving on the average?

MR. METZGER: Yes, Your Honor.

THE WITNESS: That was the figure he used.

MR. METZGER: As a matter of fact, these are the precise figures for First National Bank of Greeley for last month. For a balance of one million one hundred forty-five thousand dollars, uncollected funds of $866,000.00. Collected balances, 278,000. Reserves of 17.5 percent against that of forty-eight thousand and net balances available for investment of $239,000.

But, we will put those numbers in the record later.
And, a net of one hundred twenty-three.
THE COURT: And ninety-five cents?
MR. METZGER: And ninety-three cents, Your Honor.

Q. What we're getting to, Doctor, is that there are [689(N)] active solicitations throughout the area of loan participation activity, so that if I am competing for loan participations for a bank anywhere in the Tenth District, that should be for that product area the section of the country involved, should it not?
A. No, sir.
Q. Just viewing that product alone, assuming you don't have clusters of products? Assuming that I can as the First National Bank of Greeley does go across the country and take loan participations here and there and the other cities?
A. Tenth District would seem an odd market area for me. I think if I were going to do that, if you were going to take that approach, I would imagine it would be wider, because I know that Greeley has a few loan participations at Wells Fargo I believe. May I check Interrogatory 25 for that?
Q. I'll agree with you, Doctor. We will stipulate between ourselves.
A. I mean, I don't remember—if I could refer to Interrogatory 25—
Q. They do have California activity in lending.
THE WITNESS: So, you know, in other words, if you're going to go as we agreed, as I take it we have agreed to go for purposes of argument on an item-by-item—I certainly would agree that loan participations are probably the item where you would be able to go the farthest way. Well, Federal [689(O)] Reserve strikes me—I have not studied it, not really looked at it or thought about it too heavily but it strikes me as the most peculiar market.
Q. That's what Colorado struck me. It is peculiar that we both should have a problem on the same day on the same subject matter.
THE WITNESS: It's pretty odd.

THE COURT: What do you find peculiar about it?
MR. METZGER: Your Honor, we have banks from all over the area hammering on the doors for participation overlines. We have a clear availability of the Federal Reserve Board for clearing of checks. These are the two items where

95 percent of the nondirect charge services come from. And so as far as the rest of the dollar figure, for the First National of Greeley, it's diminimus; more than diminimus.

THE COURT: Is that the only thing peculiar about Colorado that you have?

MR. METZGER: As a market, yes, Your Honor.

Q. And I take it we are in agreement that this check clearing process could be done for the First National Bank of Greeley by the Federal Reserve Bank of Denver?

A. At some inconvenience or some—there is certainly a—yes, they could. The facilities could be availed at but what—but evidently for many banks of the type of the Greeley bank they're not—

[689(P)] Q. Let's just talk about the First National Bank of Greeley now.

THE WITNESS: —a steady preference is to use commercial banks. The Fed does not seem a very attractive or successful competitor for this kind of business.

Q. Well, are you aware of the program going into effect on May 23rd at the Federal Reserve Board of Denver?

A. Are you referring to the changes in the crediting of the deposits and so on?

Q. Are you aware that the First National of Greeley can deposit its item by midnight in the Federal Reserve Bank and have it credited to its account by 8:00 a.m. the next morning?

A. I have read the changes they are making.

Q. Are you aware that that is a more advantageous service to the banks in terms of cost than going to a correspondent for the same function in the same time span?

A. I don't know how it compares, no.

Q. Are you aware that if I send my items to a bank they will charge me float on the clearance time, is that correct?

A. I have asked a lot of bankers about this and I get some very different answers. The precise advantages of correspondent—the way the correspondent accounting is handled and the Federal Reserve accounting is handled and the Federal Reserve accounting is handled, has been a matter that I have attempted to explore with bankers and have come out with a number of different reasons of why they—[689(Q)] for the advantages which they see in terms of clearing through a correspondent versus clearing through the Federal Reserve. So, to answer your question,

that this is a matter that I can give no firm assessment to what are the relative measures, merits.

Q. So, so far as you could tell one might be better or the other might be better, correspondent versus Fed?

A. No. What I was saying is that the bankers I have talked to seem to prefer correspondents. They say it's better but I don't understand the precise mechanics.

THE COURT: Well, I thought he asked you about the float charge. Did you answer that? Do you concede that there is such a charge?

[689(R)] THE WITNESS: I don't understand what the charges are, Your Honor.

THE COURT: Well, I don't either.

THE WITNESS: Well, I mean I am non-willing to make a firm statement since this is a subject that, as I have explained, I tried to pursue—

THE COURT: Well, apparently the bankers don't know it either.

THE WITNESS: That was——

THE COURT: But it would be the bank deposits—the forwarding bank would charge the amount if they gave immediate credit——

MR. METZGER: Your Honor, this information is available on an account analysis, exactly what you are being charged with, for what.

THE COURT: You mean it appears on a statement?

MR. METZGER: Any time a bank——

THE COURT: They put a charge actually on your bank——

MR. METZGER: For transit items, Your Honor, which take a little more time than the other. Wherever there is a float involved, wherever you are using my money for a day or two days or whatever it might be, obviously I am going to have to earn enough to carry that money, and I put that charge back to the man who is making me carry that [689(S)] float. If, for example, Your Honor, you borrow——

THE COURT: Well, you don't concede, though, that there is such a charge made, I guess, Doctor?

THE WITNESS: I don't know. I know there are various charges made. I don't understand how they compare with the crediting at the Federal Reserve. That was my answer.

Q. All right. Now, Doctor, you spoke several times about the question of closed banks, that when a bank is a

subsidiary of a bank holding company it becomes closed to the business of other banks.

A. Well, I spoke of the closed sector of the market. Not quite the same, but close.

Q. Are you familiar with the First National Bank of Fort Collins in this state?

A. No, I am not, sir.

Q. Did you hear the testimony of Dr. Walsh as to the First National Bank of Fort Collins?

A. Yes, I heard it.

Q. Are you aware that it is a subsidiary then of the Western Bancorporation?

A. Yes.

Q. Are you familiar with Western Bancorporation?

A. Yes, I am familiar with the Western Bancorporation.

Q. Western Bancorporation is the largest holding [689(T)] company in the United States, bank holding company.

A. Yes, that's right.

Q. Are you aware that the First National Bank of Fort Collins is an affiliate of the American National Bank of Denver?

A. Yes. You mean that that is also a Western bank? I am aware that the American is a Western bank.

Q. All right. Now, are you aware that the American National Bank is a competitor of those banks in the State of Colorado and elsewhere which offer correspondent services in and around the State of Colorado?

A. Yes.

Q. Are you aware that the First National Bank of Denver has for some time carried overlines for the First National Bank of Fort Collins?

A. I am not aware, no.

Q. Are you aware that the First National Bank of Denver and the American National Bank of Denver are competitors in the offering of Master Charge services?

A. No.

Q. Well, then, you would not be aware that the Master Charge account is with the First National Bank of Denver. All right. Are you aware—no, you would not be aware. Suppose I told you, Doctor, that besides carrying some overlines, the Master Charge account, that beginning on [690] May 10th of this year, the First National Bank of

Denver was going to carry the First National Bank of Fort Collins' cash letter?

A. I see.

Q. Would this give you some pause on your conclusion that a bank entering a holding company becomes closed to competition?

A. No, it wouldn't give me much pause. As I stated, even after—the Colorado country banks seem to carry two or three—frequently carry two or three Denver correspondents, one of which was their prime correspondent, one of which was in the others they used for various——

THE COURT: I think you said it closed the doors to full range.

THE WITNESS: Full range of services.

Q. All right, Doctor, what is the largest single charge item that a correspondent bank offers? What is the largest single basis of a balance?

A. Usually I think the clearing.

Q. Cash letters?

A. Cash letters.

Q. So, insofar as that constitutes the major relationship, that major relationship is going to a non——

A. Right, percentage. Yes, you know, I would be surprised if indeed the percentage of total deposits were [691] larger at First National——

Q. But if I told you, though, that that relationship, that cash letter relationship, was being transferred to the First National Bank of Denver, it would not change your opinion as to the closing of the subsidiaries of holding companies to competition from other holding companies?

A. There is also nothing about banking that surprises me and the fact that somebody that—that one can find an exception to the general rule doesn't, you know—yes, I would be surprised, but I think the general rule, which is my generalization, would still hold.

Q. Let me ask you a fundamental question, Doctor. In choosing between the kinds of banking you would like to see in a given state, will you tell us which you would choose as a structural——

A. I am a branch banking enthusiast. Next would be holding companies—well, actually, what I would like to see is nationwide branch banking under national charters with free entry all over the country. I take that this is ridiculous.

Q. And lacking that?
A. Statewide branch banking.
Q. And lacking that?
A. Limited branch banking.
Q. And lacking that?
[692] A. Holding companies.
Q. And last and least?
A. Unit banking.
Q. Now, Doctor, you spoke of correspondent banking as being a specific service of a commercial bank and you mentioned that there were specialized facilities to provide these services. Can you tell us what facilities there are at the First National Bank of Denver?
A. I was——
Q. To supply correspondent banking services, particularly other than those that supply any other than those that supply any other?
A. Yes, in the facility sense I was not using that in a physical sense of the term. I meant really organization or arrangement. The facilities I was referring to was the existence of the correspondent banking department, the people who provided the—facilitated the terms in terms of what they are, of course, doing, as I believe I said, or I certainly meant to say, that what this does is provide the access of small—or banks to the correspondent. It is essentially a marketing function.
Q. Would you say that it would be fair to call it a conduit to the services of the large banks, correspondent bank departments?
A. Well, that's not quite the analogy that sticks in [693] my mind. The analogy I have is the sort of function which many industries have of taking a basic set of materials and developing them and processing them for a certain specific market. The correspondent services obviously are the services that the bank furnishes itself, but it is a transformation function more than conduit in my mind.
Q. Well, it is interesting you should choose the word "function" as distinguished from "conduit," Doctor, because that's my next question.
I have here an analysis, functional cost analysis, by the Federal Reserve Board, based on data furnished by 881 Federal Reserve banks in 11 Federal Reserve Districts for 1969, average banks, and it lists a functional cost analysis of the cost of operating these national banks.

A. Yes, sir.

Q. Will you show me where the functional cost analysis refers to functional cost associated with correspondent banking?

A. Well, I don't believe they break it out by correspondent banking for what this matter is concerned with or what the functional cost analysis is really concerned with. The customers involved are not the important thing. This is really concerned with the economies of scale and the cost of various kinds of input, inputs, where the correspondent banking is a tailoring to an output. I don't [694] remember how—it's been years. One of the advantages of my job now is I don't have to look at functional cost analyses.

Q. I understand your relief from pain, Doctor.

A. But as I recall, I won't swear to it, but there is——

Q. It is not there.

A. Okay, I will take your word for it.

Q. I will show you in evidence Plaintiff's Exhibit Number 16, which is the income account, the breakdown of income of the First National Bank of Denver, and I ask you to point out to the Court, if you may, the breakout of the income of the, quote, correspondent banking department unquote of the First National Bank of Denver.

[695] A. Wouldn't show up on something like this, because this income, as I pointed out, is in the form of the implicit interest on balances earned, which is an input. This is showing income by outputs and what the peculiar nature of the correspondent banking relationship is that they pay for it by furnishing the bank one of its inputs, which is a demand deposit.

Q. Doctor, you spoke of First National Bank of Denver's allocation analysis for its correspondent bank client as being a management tool rather than a cost allocation. Isn't it fair to say, Doctor, that just about any assessment of costs in a large business is a management tool and arbitrary in many respects?

A. Yes, I agree.

Q. I am sorry, I did not hear you.

A. Well, any cost—almost any cost analysis involves some allocation of this sort. My distinction there was that this is something which one does to prepare to write the letters of which—to tell somebody that you need more balances. This is not a bill that's rendered per se, as I understand that.

Q. Well, we think of it as a bill.

A. Well——

Q. We hope to get to collections. Doctor, you spoke briefly at the conclusion of your testimony about concentration in banking markets. Could you tell me whether any of the 232 [696] standard metropolitan statistical areas in the United States are unconcentrated banking markets any more?

A. No, I don't think there is an unconcentrated banking market in the United States, none that I know of, with the possible exception of the—well, no, if you are speaking of SMSA, they are all concentrated.

Q. Doctor, let me read to you a quote from your previous writing that you have anticipated me on. "Shoe manufacturing and shoe retailing are both highly competitive and the ability of a vertical merger to extend or enhance monopoly in such market structures is practically nil. Any merger involves foreclosure in the trivial sense that there is one less buyer or seller, but if there is competition the only way that a buyer would find himself unable to find a seller, or conversely a seller a buyer, is if integration so lessened the cost of production and distribution that a general movement throughout the industry to vertical integration resulted. Then and only then would a non-integrated firm be unable to find another dealer. Therefore, the protection of the share of the market represented by Kinney's purchases amounts to protecting the high cost, non-integrated firm from the advantages accruing to an integrated producer."

May I suggest that your answer to that, Doctor, is that you don't think that corresponding banking offerors in the general area to which we are referring is a highly [697] competitive industry?

A. Absolutely, I do not.

Q. And that is the distinction you found?

A. Yes, sir.

Q. If that distinction did not in fact exist, you would concede that this acquisition was a desirable one?

A. Well, as I tried to make clear in my testimony, that the—no, excuse me. I would not speak to the advantages of the merger. I don't—that's a separate one.

Q. You don't speak to that question at all?

A. May I—that seems to me that there is two questions. The point I tried to make in my testimony was that the

effects of a vertical merger have to be measured or assessed or evaluated in terms of the market structures involved. I thought that there is a—in banking there is a great deal of imperfections, a great many imperfections in competition. This is the area where one worries about these matters, and as I look at the market for correspondent banking in Colorado, it seems to me that this is the kind of situation where concern about vertical integration is well justified, vertical integration through merger.

Q. That brings us to the second point that you raised that you did not address yourself to in your testimony, and which I have another quote from, Dr. Hall, in which you are complaining about the Federal Reserve Board's unwillingness to [698] direct its attention to the efficiencies attendant upon holding companies. "The Board has not distinguished between efficiency and monopoly. It has regarded competition as protection of the market share of existing banks rather than as a means of protecting consumer interests." Haven't you swung around to the Board's view, Doctor?

A. No, I don't think so.

Q. I didn't think you would.

A. What?

Q. I didn't think you would.

A. As I have said, if you can't have branch banking, holding companies make a good deal of sense. The issue in this case is how do you go from a unit banking organization to a holding company organization which provides a competitive banking market, which I think is an important one. The thing that bothers me—well, it is the methods that are involved here in this case, acquisitions, expansion by acquisition, and particularly the acquisitions which are particularly involved.

Q. The particular institutions?

A. Yes, the Greeley merger.

Q. By large institutions, which brings us to the next paragraph of that quote. "The result of the Board's focus on the absolute size of banks and holding companies involved in applications," and by that you meant applications to acquire other banking institutions, "has meant that the act has become [699] a bulwark of the status quo against change. While size can often be translated into market power, the Board has attempted to make size a criterion separate from competitive impact." Doctor, have you looked at the competitive impact of this merger in Greeley?

A. The answer to your question, sir, is——

Q. In Greeley. Will it be a better banking market tomorrow than it is today or a worse one?

A. I have made no examination of the horizontal aspects of this merger. I have never discussed it. The horizontal aspects of it are not matters that I have looked at other than reading the Board of Governors' opinion. • • •

MR. SCHOEPKE: This concludes the government's case on direct, Your Honor.

THE COURT: Very well.

MR. METZGER: Your Honor, at this time I should like to move that the plaintiff's case be dismissed for failure to prove a cause of action.

[708] THE COURT: Well, the motions will be denied, but based upon—largely upon my discretion to reserve judgment at this stage of the proceedings so as to hear the defendants' evidence. This is without prejudice to your rights, of course, to renew your motion upon the state of the record as it now exists. • • •

[711] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

FIRST NATIONAL BANCORPORATION AND FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

Proceedings before the HONORABLE WILLIAM E. DOYLE, Judge, Presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Monday, May 10, 1971.

APPEARANCES:

(As heretofore noted.)

• • • • •

[726] Your Honor, at this time we should like to call as our first witness Mr. Theodore Brown, Executive Vice-President of the First National Bank.

THEODORE D. BROWN

a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • • •

By MR. METZGER:

[727] (By Mr. Metzger) Would you state your name and address for the record, Mr. Brown?

A. Theodore D. Brown, 1600 Greenbriar Drive, Englewood, Colorado.

Q. What is your business, sir?

A. I'm Executive Vice-President of the First National Bank of Denver.

Q. What are your responsibilities in that function, sir?

A. As executive vice-president I am third senior officer in the chain of command behind the chairman and the president. I have general responsibilities for administrative [728] affairs of the bank. Most of the line and the staff department heads report to me. In addition, I am a director and a member of the executive committee of both the bank and the First National Bancorporation.

Q. Mr. Brown, absent the instant acquisition, is it the intent of the First National Bancorporation to enter the Weld County market by the chartering of a de novo bank?

A. No, sir. There are no such plans for the foreseeable future.

Q. Do you have some plans beyond the foreseeable future?

A. Not at this time.

Q. Are you able to make any judgments as to beyond the foreseeable future?

A. No, sir, not as of this time. We would have to look at it as the occasion arises.

Q. Why not then acquire the State Bank of Greeley or attempt to acquire it?

A. We would not be interested in purchasing the State Bank of Greeley even if it were available to us through sale, and I don't know that it is for sale. Actually, we would probably prefer to go into Greeley de novo rather than to purchase the State Bank of Greeley except we feel that the alternative is closed to us because we probably could not get the permission of the regulatory authorities, the grant [729] of a charter, particularly in view of the two recent turndowns in the Boulder area, which is a more populous, more rapidly-growing area than Greeley. The State Bank of Greeley is a converted industrial bank. Its operations are of a very retail nature, which do not fit into the pattern of our banking and in our judgment would not serve as a vehicle for the kind of banking service we would like to offer in the Weld County market.

Q. In any event, the acquisition of the First National—the acquisition of the State Bank of Greeley would not add to the number of banks in the market, would it?

A. No, sir, it would not.

Q. Generally, sir, what advantages or disadvantages do you foresee accruing to the First National Bank of Greeley through this proposed affiliation with the First National Bancorporation?

A. Well, we see several advantages to the First National Bank of Greeley. We have observed that the share of the market in the Weld County area which the First National Bank of Greeley controls has been steadily decreasing for approximately 20 years. Now, this would indicate to us that they are not taking a strong competitive position in the market which we feel quite likely results from some thin and some weak management. We would hope to improve that situation by contributing management skills in specific [730] areas such as agricultural credit, real estate lending, consumer finance, for example. The field of agricultural credit is very poor in Weld County. Farmers and ranchers generally throughout our area are using a great deal more credit than in past years, largely as a result, I think, of the increased size of farming and ranching units, the dependence upon mechanization and just generally the reliance upon capital rather than upon labor.

This means in many cases the credit requirements of farm borrowers have outgrown the capabilities of the country banks. Greeley, for example, has I think approximately 40 percent of its total loan portfolio in agricultural loans.

Q. Mr. Brown, I show you Defendants' Exhibit Number 9, which is a list of 100 largest agricultural lending banks in the United States and ask you whether you can observe on this document whether or not either the First National Bank of Denver or the First National Bank of Greeley is contained in the group of the largest bank agricultural lenders in the United States.

A. The First National Bank of Denver I find listed on the exhibit as Number 15, I think.

Q. Yes.

A. The First National Bank of Greeley is shown on the exhibit as Number 58.

Q. So do you think it's fair to say then, Mr. Brown [731] that both institutions are substantially involved in agricultural lending?

A. Yes, sir.

Q. Mr. Brown, I show you Defendants' Exhibit 8 and ask you whether or not this analysis of the loan portfolio of the First National Bank of Greeley supports your contention that they are heavily engaged above the norm in agricultural lending?

THE COURT: What number is that?

MR. METZGER: Number 8, Your Honor.

A. Well, this shows that the First National Bank of Greeley for the year 1969 had 36.7 percent of its loan portfolio in farm loans.

Q. How does that compare with the State of Colorado as a whole, sir?

A. The corresponding figure for the state is 11.9 percent.

Q. And what does this document reveal with regard to the penetration of the market for one- to four-family mortgage lending by the First National Bank of Greeley?

A. The First National Bank of Greeley for the year 1969 is shown as having 3.6 percent of its portfolio in real estate of one- to four-family dwellings.

Q. Against a state figure of——

A. —9.3 percent.

[732] Q. What about consumer financing, sir?

A. There isn't a breakdown by category described as consumer financing. Individual loans relatively include that category. Individual loans for the First National Bank of Greeley for the year 1969 are shown as 14.2 percent of the portfolio.

Q. Against a state average of——

A. —as contrasted with the state average of 28.3 percent.

Q. From these numbers, Mr. Brown, what would you conclude with regard to the lending emphasis of the First National Bank of Greeley?

A. Well, obviously they are heavy in the agricultural area and to me this has some ramifications because, taking into account the increased demands of the farmers and ranchers for more credit that I was speaking of a moment ago. It means to me that the First National Bank of Greeley is going to have a very difficult time keeping up with the requirements of those farm borrowers and at the same time not sacrifice the interests of the real estate borrower and the individual borrower in the consumer credit field.

Q. Do you think they have done that thus far?

A. I say they are quite top heavy in agricultural credit and we feel that they have not been as aggressive in the fields of real estate lending and in consumer finance [733] as they might have been.

Q. Do you see any correlation between this lack of aggres-

siveness in mortgage and in individual financing and the decreasing market shares of this institution?

A. Yes, sir, I think there would be a correlation.

Q. Do you plan, if the First National Bank of Greeley is acquired by the First National Bancorporation, to reduce its farm lending in order to increase its penetration of other spheres?

A. No, sir, by all means we would attempt to maintain the level of service to the farm and ranch borrowers, but at the same time increase the level of performance in the areas of real estate lending and consumer financing.

[734] Q. And how would you accomplish this, sir?

A. Well, by a variety of means. Again, the problem of a country bank is a problem of developing lendable funds. Agricultural depositors—agricultural depositors don't generate deposits comparable to commercial customers. Therefore, the country bank is faced with the problem of developing other sources of lendable funds. We feel that we could help in this problem, that the Bancorporation could do one or more of several things.

For example, if we are permitted to put together a statewide network of affiliated banks we could improve the mobility of funds by transferring funds from one bank or one area to another in terms of seasonal need or for special loan situations.

Secondly, the Bancorporation has access to national money markets through the sale of commercial paper or securities of other types.

Q. Does the First National Bank of Greeley have access to these markets?

A. No, sir, I was about to say that is denied to most small banks. They simply cannot market that type of paper.

The funds, the proceeds, from the sale of commercial paper and/or the securities of various types could be used by the Bancorporation then to purchase loans, to provide additional lendable funds in fact to the First National Bank of [735] Greeley. We could use an institution known as Agricultural Credit Corporation for the purpose of purchasing agricultural loans from the First National Bank of Greeley, thereby making more funds available for other types of lending that we have discussed.

Q. How would an agricultural cooperative of the type you speak permit you to increase the lending capacity of this bank?

A. The Agricultural Credit Corporation, which is a separate corporation, the stock of which is generally owned by the bank or in this case the Bancorporation, buys loans from the bank and in turn sells or discounts those loans with the intermediate credit bank, using the funds that flow back to go back into the bank.

Q. What kind of a multiplier could you find through the use of an agricultural credit corporation?

A. I am advised after a period of operation the Agricultural Credit Corporation is entitled to buy or discount from the intermediate credit banks up to seven times its capitalization.

Q. Now, you speak of your ability to aid in the agricultural lending of the First National Bank of Greeley by a variety of means, by shifting funds through the state, by commercial paper, by other financing by the Bancorporation and/or by an agricultural cooperative. Could you not do that for the benefit of your correspondents?

[736] A. No, sir, recent experiences have indicated the correspondent system has not worked that well. All other things being equal and over the past years, the correspondent system I think has done a pretty good job, but in recent times, and I cite the extreme credit crunch of 1966 and the tight money periods of late 1969 and 1970, the correspondent system to some extent bogged down, the reason I think being that the city banks had their own borrowing customers to whom they had to provide credit. Competition for the available amount of credit was intense and credit simply didn't flow through the correspondent system to everybody's satisfaction.

Q. Would you in any event commit personal funds of the Bancorporation to correspondents?

A. No, sir, I couldn't do that.

Q. What precisely would you propose to do to aid the First National Bank of Greeley with regard to its alleged weaknesses with regard to individual lending and mortgage lending?

A. Well, we have a very highly organized and developed real estate loan department, First National Bank of Denver, which I believe is fairly generally recognized as one of the leaders in this area. It is staffed in depth with competent people who understand the intricacies of FHA lending, VA lending, construction lending and other types of specialized real estate lending. The knowledge and experience of those

people could be made available to the First National Bank of Greeley [737] and to train, counsel the officers there, and I think the same thing can be said of the consumer finance field, which is a very specialized lending function and is entirely foreign to the knowledge of most country bankers.

Q. Couldn't you train your correspondents to do this?

A. Well, theoretically, I suppose we could. We very seldom would. We would not be paid for the service normally. The connection with the correspondent is too tenuous really to permit us to make that kind of investment in time.

Q. Mention has been made in this courtroom of a, quote, loan production office of the First National Bancorporation, in Greeley. Could you explain to us, sir, what that is?

A. Yes, the term itself is something of a misnomer and it is rather misleading. We do have a mortgage servicing agency in Greeley which was acquired with the Mortgage Investments Company in 1968. Now, this is not a banking office and does not perform banking functions. It simply sells and services real estate loans to long term investors, and, for example, savings and loan institutions, mutual savings banks, insurance companies, most of which are located in the eastern states. The agency, as I say, performs no banking function. It does collect a fee for servicing these loans for the purchaser-investor. That fee represents our income from the operation, which, incidentally, has not been highly profitable to date. He probably will review it from time to time and continue it [738] or discontinue it, based upon its profitability analysis.

Q. Would the continuation of this mortgage servicing operation in Greeley——

THE COURT: Where do you get the fee, from the seller or buyer?

THE WITNESS: Beg your pardon, Your Honor?

THE COURT: What's the source of the fee?

THE WITNESS: The fee comes from the buyer, servicing fee.

Q. Would the continuation of this mortgage servicing operation in Greeley be affected in any way by the affiliation or nonaffiliation of the First National Bank of Greeley with First National Bancorporation?

A. No, we don't view that as a part of this acquisition

problem at all. As I say, we will finally decide to continue that or discontinue it based upon its profitability.

Q. Are there other areas in the planning phases of bank operations where First National Bank of Greeley might benefit from its affiliation with the First National Bancorporation?

A. Yes, sir, I think there are. At the First National Bank of Denver, we put a great deal of stress upon management planning, forward planning, and a specific example of that I think is in the income tax accounting field. We have a staff of specially qualified people. We use computerized information to preplan in income tax accounting. Specifically, that includes [739] things such as these where there might be an option or an alternative method of tax accounting. It is the responsibility of these people to weigh the advantages of one method against the other and make a decision. It is their responsibility to follow up almost on a daily basis changes in either the IRS regulations or in our own situation as applicable to situations. They consider the tax impact of almost everything we do in the bank, and they do it, as I say, on a daily basis, and on a forward basis.

Now, it is my understanding that the tax accounting presently in force in Greeley is more like that in any other country banks, and that amounts to getting up to the eleventh month of the tax year or maybe up to the last two weeks of the tax year and calling in an accountant, and by this time it is too late to achieve the maximum benefits or savings that can be achieved through the forward method.

Q. Could you do this forward planning for the benefit of your correspondents?

A. It would not be practical, no, sir, we couldn't. Number one, the accounting systems of our correspondents are not necessarily compatible with our own. Number two, this kind of thing involves a trust and a delegation of authority and decision. You sort of bare your soul to the fellow who does the tax for you, and I think there is a psychological resistance of correspondent banks to lay out all their records, [740] for the fear I suppose of what might happen to them competitively, and in the final analysis what happens is a management decision. We could recommend to a correspondent but we would be in no position to make the decision for them.

Q. Would you say then that this constitutes a day-to-day

domination of the management affairs of the institution that you were doing the service for?

A. No, I don't think so, because if by institution you mean an affiliate bank, First National Bank of Greeley, for example, I don't believe it would, because the First National Bank of Greeley would continue to have its own management officers with management responsibility and its own board of directors.

Q. Yes, but is this not an intimate——

A. It is a very close relationship.

Q. Relationship with day-to-day management decisions of that institution?

A. And it involves a closer relationship than we could normally ever achieve with a correspondent bank.

Q. Do you know of any correspondents with which you have that kind of relationship?

A. No, sir, I don't.

Q. Are there any other ways in which you might aid the First National Bank of Greeley, let us say, in the management area?

[741] A. Yes, sir, in the area of maybe personnel.

Again, one of the serious problems that faces a country bank is the problem of management succession. It is very difficult to attract and retain competent, capable young people in country banks. They tend to feel that they are going down a blind alley or dead end or being boxed into a situation where they don't have the freedom of growth that they might have in a larger institution. I am aware that that, for example, that the First of Greeley has been looking for a head of the installment loan department for some nine months to a year, and I understand that this thing of which I speak is a factor in their being unable so far to satisfy that need. I have had a personal experience in that regard. I have been trying for two or two and a half years now to recruit a capable young trust officer for the Security State Bank of Sterling, and I find that many of these young people don't want to go to a small bank unless they can receive some assurance that there is a future for them in growth potential, that they can move around in the banking organization to which they are going to be attached. In fact, two of these people who were otherwise entirely acceptable to us took the position that if we at that time could have assured them that we were a member of the First National Bancorporation, that they had a possibility in the future of

being transferred, we will say to a bigger bank or to a different living situation that they would have accepted it. [742] We, of course, couldn't make the assurance and they did not accept.

Q. Mr. Brown, it has been suggested in the course of this hearing by a witness for the government that the banks in Denver are somewhat soft competitors and that they tend to follow parallel pricing practices, is this true to your experience?

A. No, sir, I would certainly not characterize the Denver Banks as soft competitors.

It seems to me we compete very aggressively. For example, in the First National of Denver, we have a formal officer calling program, under which our bank officers are assigned a number of calls each year of business accounts. These are not social visits. These are business purposes.

The fellow goes out with a business message and he is expected to ask for business while he is there. It is also true we don't make these calls on only new prospects. We call on all the businesses in Denver, whether they be our customers or other customers, in order to obtain their business.

Q. Now, Mr. Brown, in addition to being senior official of the First National Bank of Denver, and the former president of the Security State Bank of Sterling, you have held positions in the State Banking Association, have you not?

A. That is true. I was president of the State Banking Association in 1960, I believe.

[743] Q. During that time have you had occasion to visit most of the banks and banking areas in this state?

A. Yes, sir.

Q. Could you compare for us what in your judgment is the level of banking competition obtained in Denver and the rest of the state?

A. Well, I think Denver is to my knowledge probably the most competitive market in the state.

Q. Now, Mr. Brown, I think the $64 question is would you carry this policy of vigorous competition that you utilize in Denver into Greeley if you were permitted to acquire the First National Bank of Greeley into your holding company?

A. Most emphatically, yes.

Q. Would you call on all customers in the market, whoever they might be?

A. Yes, sir.

Q. Do you believe that the acquisition by the First National Bancorporation of the First National Bank of Greeley will aid or impede the course of competitive activity in Weld County?

A. I think it will aid the course of competitive activity in Weld County.

MR. METZGER: No further questions.

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[745] CROSS-EXAMINATION

By MR. SCHOEPKE:

Q. I believe you indicated at the beginning of your testimony that you had no intention whatsoever of going into Greeley via the de novo route.

Could I ask you in terms of the holding company's overall plans, have you absolutely ruled out the possibility of de novo entry anyplace?

A. No, sir. We have not absolutely ruled it out anyplace.

Q. As a matter of fact, you have endeavored very recently to accomplish de novo entry into the Montbello area, have you not?

A. That is correct.

Q. And, of course, the original organization of your affiliates here in Denver area were all de novo organizations of affiliates just prior to the holding company formalization, isn't that correct?

A. Yes, sir. At that time and in those places we felt that the appropriate method.

Q. And do you feel that your organization has the resources for de novo growth, where appropriate?

A. I think where appropriate we could manage the resources.

[746] Q. Now, I believe you indicated that you felt that the First National Bank of Greeley had a thin and weak management. Is that about the way that you put it?

A. I think that's about what I said.

Q. Now, you were involved in the negotiations leading up to the finalization of the contract to acquire the bank in Greeley, were you not?

A. No, sir, I was not directly involved in those negotiations.

Q. In the course of preparation for this case, have you

had occasion to read the annual reports of the First National Bank of Greeley?

A. The First National Bank of Greeley?

Q. Yes.

A. No, sir.

Q. Do you know anything about the First National Bank of Greeley, fiscally, that is?

A. Yes, I think I have a general knowledge of the size of the bank.

Q. How big is it in terms of deposits?

A. Approximately $40 million in deposits.

Q. And do you know whether it is making money or losing money?

A. I don't have that information. I will assume it's making money but I can't give you a quantitative answer to it.

[747] Q. Now, what is the basis of your statement then that the First National Bank of Greeley has a thin and weak management?

A. Well, it relates primarily to those areas that I discussed on direct examination in which we feel the statistics indicate they have not done as good a job in certain areas as they might have done and as we would hope to do.

Q. Well, now, all of these areas that you have mentioned, increasing their ability to stand agricultural credit and agricultural loans and mobility of funds and tax assistance and whatnot—aren't all of those things available to the Greeley bank already, pursuant to the fact that they are one of your correspondents?

A. No, sir. I thought I answered Mr. Metzger's question that we could not make many of those services available to a correspondent in the same fashion we could to an affiliate.

Q. In the same fashion? But, you could make them all available, could you not? Isn't that what a correspondent banking department is for, to assist local——

A. No, sir.

Q. —local correspondents?

A. No, sir. I don't think that is a primary purpose of a correspondent banking system.

[749] Q. Now, is the First National Bank of Denver—does it furnish assistance to its correspondents in Federal funds transactions?

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A. We buy Federal funds from correspondent banks as well as on the open market. This is really not a function of the correspondent banking system. It's a method by which we obtain federal funds and liquidity in our bank.

Q. But you do that for correspondents?

A. Well, not for correspondents. We do it primarily for our purpose.

Q. But do you do it at all for your correspondents?

A. Well, we buy from correspondents federal funds for our purposes in the First National Bank of Denver. We also buy federal funds on the open market.

Q. Now, does the First National Bank give advice—[750] investment advice and portfolio management advice to correspondent banks?

A. We have recently adopted a computerized printout form which tabulates municipal bonds, prices them in groups and by maturity and by states, and this type of thing. That service is available to correspondent banks. It is also available to non-correspondent banks on a fee basis. This is something we sell.

Q. How about safekeeping of securities and matters of that sort, and escrow accounts? Is that a service that your bank performs for its correspondents?

A. I would have to answer that one very generally, Mr. Schoepke. I don't have daily contacts with those areas. It is my understanding that we do perform some safekeeping services of securities for country banks.

Q. And how about clearing of checks? Do you clear checks for your correspondent banks?

A. Yes, sir.

Q. And how about transfer of funds, wire transfer of funds and that type of thing? Do you perform those services from your correspondents?

A. We are equipped to perform that service upon request.

Q. And how about special services that we have heard a lot on? I don't know if you were in the courtroom, [751] purchasing tickets for events and so forth? Do you perform those services?

A. I wasn't in the courtroom. I don't know what you refer to.

THE COURT: Airplane tickets, show tickets, hotel reservations; this sort of thing.

THE WITNESS: We have a young lady on our staff which

we call special services officer, Your Honor, and she is available to make reservations and purchase tickets, but she does this for customers of the bank, friends and relatives.

THE COURT: I think we can well afford to get to another subject. This is outside the scope. I have let you go on this because he did—he testified of course, that the correspondent relationship just has certain limitations and so I have let you proceed. But, I think we have exhausted the possibilities.

MR. SCHOEPKE: Very well, Your Honor.

Q. Mr. Brown, would you not say that—is it not your assertion that if you replace correspondents by buying them and making them affiliates of your holding company, that you will give them these better services which they already get to some extent from you as a correspondent relationship? Isn't that what you're saying? That the holding company acquisition of a correspondent like Greeley [752] will simply improve upon something that is already good?

A. No, I wouldn't agree with that language, Mr. Schoepke. I think what I feel and hoped I said was that the correspondent banking relationship does have some limitations which enforces limitations upon our ability to perform. I feel that the acquisition of an affiliate solves some of the problems of those limitations. That is not to say that we're going to try to substitute an affiliate for every correspondent bank account we have.

[753] Q. But is it your assertion that it would ameliorate the limitations, as you put it?

A. In specific instances such as we are discussing in Greeley, there are certain areas in which we perform better for an affiliate than we can perform on a correspondent relationship.

Q. But you are not saying on the basis of a correspondent relationship you cannot perform in these areas at all, are you?

A. I am saying we are extremely limited in some of those areas and we are grouping quite a few types of functions together when you say that.

Q. Now, Mr. Brown, you mentioned agricultural credit, and I believe that you suggested if Greeley were to become an affiliate of the Bancorporation that an agricultural credit corporation could be organized and that would extend the

ability of First National Bank of Greeley to offer agricultural credit because it could discount its agricultural credit with the Federal Farm Credit Bank in Wichita, Kansas, I believe it is, isn't that correct?

A. That——

Q. Now, let me ask you this. Is it necessary for the First National Bank of Greeley to form a holding company like Bancorporation in order to organize one of those ag credit banks?

[754] A. No, sir, it is not necessary in order to do so.

Q. Do you know how much capital is required to organize one of those agricultural credit banks?

A. No, sir, I am only generally aware of the requirements for organizing, and since I was more active in Sterling I think the regulation has changed and I don't think I can tell you the basic figure.

Q. Did you by any chance organize one in Sterling?

A. No, we did not.

Q. Do you happen to know if the bank in Keenesburg organized an agricultural——

* * * * *

[755] Q. Well, perhaps I better withdraw the question and ask it another way. You are familiar with Weld County, are you not?

A. Generally so, yes, sir.

Q. And, of course, you are familiar with the Greeley bank, First National Bank in Greeley?

A. Generally so.

Q. Are you acquainted with the Fort Lupton State Bank?

A. Only that there is a state bank in Fort Lupton. I don't know that situation.

Q. Well, let me ask you, do you know whether the Fort Lupton State Bank organized an agricultural credit corporation?

A. No, sir, I don't.

Q. Do you know whether or not the State Bank at Keenesburg organized an agricultural credit corporation?

A. I don't know that they organized one.

Q. Now, Mr. Brown, one of the points that you made as to what you thought would be the advantages of a holding company such as yours in acquiring a bank such as Greeley would be—and other banks throughout the state—would be to improve the mobility of funds. May I ask you, don't

we already have mobility of funds through the correspondent banking system and [756] the overline system and the participation system that we have all heard about? Isn't it possible to transfer funds back and forth throughout the state under the correspondent banking system?

A. Well, again, I intended to answer that if I did not on the direct in theory there is a degree of mobility of funds available through the correspondent system, but the problem is that the impact of the tight money period that we have lived through makes—considerably hampers that mobility. Each individual bank has its own problems with credit requirements. They are not as free to buy loans or to participate in loans, which really is the basic way that you make funds mobile through a correspondent system and the only way you can make it available through a correspondent system.

Therefore, it is my conclusion that it has been for many years that the correspondent system is simply too tenuous an arrangement for a country bank to depend upon in this area of developing lendable funds in very difficult periods.

Q. Well, do you feel that this problem of mobility of funds is such that all country banks should be abolished and all should be members of holding companies? Would that improve the situation?

A. No, sir, because not all country banks have the same loan requirements, the same loan-deposit ratios or the same pressures.

[757] Q. Now, do you have any assurance, assuming now that we would have a holding company system, a statewide holding company system with many affiliates or various affiliates, let us say, do you have any assurance as to which way the mobility of funds would go?

A. I think it is one of the great advantages, Mr. Schoepke, of the system that they can go either way. There are times when there are excess funds in what we would call country banks and they can flow to the city, assuming the city is the big bank in the affiliate group.

Q. If investment opportunities in the city or let's say up in Vail or Aspen were preferable to those out in Greeley, where would you expect the funds to travel?

A. I would think that the individual bank management and directors would see to it that they did not ship out the funds which they could lend in their trade area in order to

accommodate another section of the state if in fact they needed them themselves at that period.

Q. Could you tell me is there any reason in your view why the First National Bank of Greeley should be exempt from a policy of tight money created by the Federal Reserve Board?

MR. METZGER: Objection, Your Honor. I think this is too heavy a burden to place upon this witness.

THE COURT: Well, I don't know about that. He might try.

[758] THE WITNESS: I appreciate your confidence.

THE COURT: Do you understand the question?

THE WITNESS: May I have the question again, please.

THE COURT: Surely, the reporter will read it.

(The reporter read the pending question aloud.)

THE COURT: If you said that. I don't suppose you have to admit that you did. It is a little bit loaded, I think, this question.

A. Yes, it is a very difficult question to answer because it is loaded. Number one, I can't speak for the First National Bank of Greeley in that respect. Number two, or probably the other way around, I certainly can't speak for the Federal Reserve Board's policy on tight money. I am not sure there is a written policy on, quote, tight money, but I don't feel that what we are talking about contravenes the general policy, if that's what you had in mind, against making new loans available for new acquisitions, speculative loans, that type of thing. We were talking on the direct examination of service to existing agricultural borrowers in Weld County and the improvement of lending services to real estate borrowers and people interested in consumer finance in the market.

Q. Well, you spoke about what you thought from such knowledge as you had of the First National Bank of Greeley that there was weak management there. I'm just wondering, are you aware of the fact that since 1966 seven people were [759] offered positions there and—or, nine were offered positions there and only two of them turned them down? Were you aware of that?

A. I have no knowledge of that, sir.

Q. Are you aware that the First National Bank of Denver

as a correspondent bank in Denver assists its correspondents in training personnel?

A. We do very little training of personnel, to my knowledge. Again, this is—the correspondent banking division is a specialized division with which I don't have day-to-day contact.

MR. SCHOEPKE: We have no further question, Your Honor.

MR. METZGER: Just a few questions, Your Honor.

REDIRECT EXAMINATION

By MR. METZGER:

Q. Cross-examination raised the subject of your Montbello operation. I wonder if we might trace the chronology of that. Did the First National Bank—what is Montbello, to start with?

A. Well, as I understand it, the term Montbello applies to a geographical area located in the northeastern part of Denver.

Q. In the city of Denver?

A. I'm not sure whether it is in the city limits or not, actually.

[760] Q. I think the Court could take judicial notice that it is in the city limits.

A. In the area of Stapleton International.

Q. Did you originally propose to organize a de novo bank there?

A. No, sir.

Q. I don't mean your first formal proposal. I mean your original intrabank contemplation of this question.

A. No, sir, the original approach was an attempt to acquire an existing state bank in the area.

Q. I think that we better explore the facts on this a little later. The question was raised as to the organization of affiliates. Where are the three small banks in the holding company located?

A. First National Bank of Bear Valley, First National Bank of Southglenn and the First National Bank of Northglenn.

Q. Could we characterize these fairly as suburban banks?

A. I think so, sir.

Q. Were these developed suburbs when they moved in or new suburbs?

A. Well, I was not living in Denver at the time so I can't answer that with personal knowledge. My impression is that they were developing areas.

Q. Is there a difference between the operation of a suburban shopping center bank and a downtown wholesale bank?

[761] A. Yes, sir, there is.

Q. Is there a quality difference in personnel?

A. Generally so.

Q. What do you mean by that, sir?

A. Well, the downtown or wholesale oriented bank generally has to provide staff competent and capable to deal with larger credit, more sophisticated customers with more complicated business problems.

Q. So that the organization of a suburban banks is a different proposition in your view?

A. That's correct.

Q. On the subject of the agricultural affiliate, sir, what do you propose to offer to the First National Bank of Greeley there that it does not have in the possible formation of an agricultural affiliate?

A. Well, we have committed and earmarked and set aside $1 million for the capitalization of this proposed agricultural credit corporation. What sum of money the First National Bank of Greeley may be able to commit as capital. I don't know.

Q. But you have that money.

A. We have that money.

Q. Obtained how?

A. Through the sale of debentures by the First National Bancorporation.

Q. Is that vehicle, to repeat your direct examination, [762] is that vehicle available to the First National Bank of Greeley?

A. No, sir, it is not.

Q. Now, sir, a mention was made of an agricultural affiliate of the Fort Lupton State Bank. Are you aware of the ownership of that bank?

A. I am sorry, I have no current information about the ownership or the agriculture affiliate of the Fort Lupton State Bank.

Q. The question was raised which way would the funds of First National Bank of Greeley go if it was part of the holding company. Speaking of the small banks already in

the system which were organized by the Bancorporation, have these banks ever been excessively loaned beyond their total deposit structure?

A. At the very beginning of their operations they were loaned beyond—not beyond their deposit structure, but beyond what we would normally consider a reasonable loan-deposit ratio, for the reason that the First National Bank of Denver was sending loans to them for income purposes.

Q. In order to aid in the development of that?

A. That is correct.

Q. This could be done both ways with the First National Bank of Greeley?

A. I believe that's true.

[763] Q. The question was asked whether or not the First National Bank of Greeley should be exempt from Fed. tight money policy. Could you tell me, sir, whether there are substantial holding companies throughout the United States, bank holding companies?

A. Yes, there are.

Q. Do they in fact not control the majority of bank deposits in the United States?

A. I believe that's correct.

Q. Do you propose to do anything through your holding company that these holding companies do not do today?

A. We would propose to do nothing that they cannot do, nothing that is not legally permissible.

MR. METZGER: No further questions.

MR. SCHOEPKE: Just two questions on recross.

RECROSS-EXAMINATION

By MR. SCHOEPKE:

Q. Mr. Brown, getting back to the agricultural credit corporation that Mr. Metzger just discussed with you, is it not possible for an agricultural credit corporation to be organized by First National Bank of Denver and First National Bank of Greeley on their present existence as correspondent banks instead of having this holding company?

A. I don't truthfully know the answer to that, Mr. Schoepke. I just am not that familiar with the organizational [764] procedures in agricultural credit corporations.

Q. Now, the subject of shifting funds among the affiliates of holding companies came up again. Now, I had originally

asked you do you have any assurance as to which way the funds would flow, would they flow from the city out into the country or from the country into the city. Now, assuming that a bank such as Greeley becomes part of a holding company, then stockholders of the Greeley bank are now stockholders of the holding company, is that not correct?

A. That would be true.

Q. Now——

A. I should say those who exchange their stock would become stockholders of the holding company.

Q. Yes, but vis-a-vis the Greeley bank those with the financial interest are stockholders of the holding company, are they not?

A. I concur with that.

Q. Now, if there should be more advantageous loan rates in Denver or Colorado Springs or what have you than there are in Greeley—in other words, if the percentage return from investments and loans and whatnot is greater along the slope of the mountains or maybe in some of the developments over on the other side of the mountains, would you not expect that in the interest of the stockholders of the holding company that the money would tend to flow from the Greeley area into the [765] Denver area?

Mr. Metzger: Objection, Your Honor. This is beyond the scope of redirect.

In fact, all it is is an extension of the cross-examination on a point that I did not raise.

[766] Mr. Schoepke: Well, the subject was brought up again——

The Court: Overruled. He may answer.

The loans are more attractive outside of Greeley. Would you anticipate the funds would flow in those directions rather than the loan, locally? That's the essence of what the question was.

Q. Bearing in mind the stockholders are the stockholders of the entire holding company organizations.

A. No, sir. I would not anticipate that result would follow automatically or in every case. For one thing, the opportunities to invest—the theoretical opportunities to invest in these higher-rate loans that you're talking about exist now and if the management and directors at Greeley felt no particular responsibility to the community those investments could be put into the Greeley portfolio now.

The fact that they change hats and become stockholders of the Bancorporation does not persuade me that they would be negligent in their obligations to the community in which they live and which their bank has been a fixture for a hundred years, more or less. I just believe the hypothetical situation you describe would occur.

Q. I'm not suggesting negligence. I'm asking you what in your opinion as a banker of many years the tendency might be under the circumstances?

[767] A. The tendency might be to raise rates in Greeley.

MR. SCHOEPKE: No further questions.

REDIRECT EXAMINATION

By MR. METZGER:

Q. Let me rephrase that last question.

Sir, would it be your policy as a senior executive officer of the First National Bancorporation to direct your subsidiary banks to move funds where they obtain the greatest return at the expense of their local responsibilities?

A. Most certainly not.

MR. METZGER: No more questions.

(Witness excused.)

MR. WILLIAMSON: Defendants call A. H. Trautwein to the stand.

A. H. TRAUTWEIN,

a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. WILLIAMSON:

THE COURT: State your name and address and occupation, please.

THE WITNESS: A. H. Trautwein, Cheyenne, Wyoming, banking.

Q. (By Mr. Williamson) Are you presently Chairman of the Board of the Wyoming Bancorporation?

[768] A. Yes.

Q. And are you presently President of the Cheyenne National?

A. No, sir.

Q. What is the position you hold there?

A. Chairman, Executive Committee.

Q. Did there come a time, sir, when you had discussions with principals or representatives of the State Bank of Greeley with a view toward purchasing that bank?

A. Yes.

Q. What was the result of those discussions?

A. Terminated.

Q. Why were they terminated, sir?

A. Well, I didn't think they wanted to sell. They indicated they might like to sell but they raised such limitations that in my mind they didn't want to sell.

Q. What were those limitations?

A. They wanted to keep control and they wanted to keep the same management in the bank that they already had and they also put a very high price on their stock.

Q. I take it as far as you were concerned this was tantamount to no offer of sale at all, is that correct?

A. Yes, sir.

Q. Did there come a time, sir, when you were a banking official at the Greeley National Bank in Greeley?

[769] A. Yes.

Q. During that time did you ever make any decision to grant or deny credit, to set a given rate of interest, to charge or pay? Was it ever affected by the prospect that you might thereby induce First National Bancorporation to apply for or secure a charter to operate a bank in Greeley?

A. No.

Q. I take it this is simply a theoretical model then of an account and has no hearing upon management decision?

MR. SCHOEPKE: I object to that.

THE COURT: Sustained.

Q. Based upon your experience in Greeley as a banker and based upon the competition you had with First National Bank of Greeley, have you reached a conclusion with respect to the quality of the management below the two top men at the First National Bank of Greeley?

A. We thought they were singularly unaggressive.

Q. Would you also characterize it as thin?

A. Well, I presume that would be a good word.

MR. WILLIAMSON: I have no further questions, Your Honor.

CROSS-EXAMINATION

By MR. BRENAN:

Q. Mr. Trautwein, when were you connected with the [770] Greeley National Bank?

A. In the '50s. I left in December, '59.

Q. Is it true that at that time First National Bancorporation was not even in existence?

A. Yes.

Q. Is it also true that about that time First National Bank of Denver and the International Trust Company merged to form the present First National Bank of Denver?

A. I don't recall when they merged.

Q. Mr. Trautwein, what particular individuals did you approach when you attempted to buy the State Bank of Greeley?

A. Winnie McCrory and Martin Field and also talked to their board.

Q. When was this? What year?

A. '55, '56—I mean, '65, '66. Maybe '67. I really couldn't tell you for sure. Must have been about '67, I believe.

Q. Now, you were aware of the fact that Mr. Field has since died?

A. Yes, sir.

Q. Have you ever approached the people who are presently running the State Bank of Greeley?

A. No.

Q. Would it be safe to say that your conclusions with [771] regard to the management of the First National Bank of Greeley relate only to the period that you were present in Greeley as a banker?

A. Yes.

MR. BRENAN: No further questions.

REDIRECT EXAMINATION

By MR. WILLIAMSON:

Q. Irrespective of my slip as to the formation of the First National Bancorporation, I take it your answer to my question would not change if I had asked you to take into consideration management determining the entry of the First National Bank of Denver through formation of a holding company?

MR. BRENAN: May I object to counsel leading the witness?
THE COURT: Yes, you may, and I will sustain it.

Q. Would your answer to the question be any different if I asked you if you took into consideration the activities of the First National Bank of Denver?
A. I'm a little lost on what the full question is.
Q. The full question is as to whether or not at the time that you were making loans, soliciting customers, you took into account the prospect of the First National Bank of Denver some day, somehow entering into the Greeley area?
A. I don't think that we make management decisions to [772] eliminate competition or future competition. We make it on what we think is best.
Q. You make it, do you not, based upon a consideration of that particular applicant and of a particular customer you solicit?
A. At the time, yes.

MR. WILLIAMSON: I have no further questions, Your Honor.

RECROSS-EXAMINATION

By MR. BRENAN:

Q. Mr. Trautwein, I take it that any statement that you make as to the influence of First National Bank of Denver on your activities would be limited to the—to 1959 and the time prior to that when you were associated with the Greeley National Bank?
A. What statements did I make?
Q. In response to Mr. Williamson's——
A. Any time I think a banker—if he is interested in the bank—makes a decision for the time for the man who is applying for the good of the community, irregardless (sic) of outside influence or what he thinks might be outside influences.

MR. BRENAN: No further questions.

(Witness excused.)

MR. METZGER: The defendants call Mr. Norman Dean.

[773] NORMAN M. DEAN,

a witness called by and on behalf of the defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. METZGER:

THE COURT: Give us your name, address and occupation.

THE WITNESS: Norman M. Dean, 1814 Montview Boulevard, Greeley, Colorado. I am President of the United Bank of Greeley.

Q. (By Mr. Metzger) How long have you held that responsibility, Mr. Dean?

A. Since 1964.

Q. Mr. Dean, has your decision to grant or deny credit, to set a given rate of interest, to charge or to pay, ever been affected by the prospect that you might thereby induce First National Bancorporation to apply for and secure a charter to operate a bank in Greeley?

A. No.

MR. METZGER: Thank you. No further questions.

I am advised I should ask one further question.

Q. Mr. Dean, do you belive that there is room for another downtown commercial bank in Greeley?

A. No, sir.

MR. METZGER: No further questions.

[774]

CROSS-EXAMINATION

By MR. BRENAN:

Q. Mr. Dean, is your bank a member of a holding company?

A. Yes.

Q. What holding company?

A. United Banks of Colorado.

Q. Now, Mr. Dean, could you state the geographic area in which your bank draws the bulk of its business?

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[775] A. Our primary market is the City of Greeley.

Q. Now, are you aware that the First National Bank of Denver has customers in the City of Greeley?

A. Yes, I am.

MR. METZGER: Your Honor, I must continue to object. It's clear from the question and the first question and the answer it is outside the scope of direct examination here and we're getting much further afield.

MR. BRENAN: I submit it's not, Your Honor. That Mr. Dean's knowledge on this—these subjects could influence his decision in serving the people in the market.

THE COURT: The answer to this next one is obvious, I suppose, isn't it?

Go ahead and answer.

A. Yes.

THE COURT: Okay. I would assume he would know that. What are you getting to?

MR. BRENAN: I think the next question could establish——

Q. Mr. Dean, are you aware that, if your pricing gets too far out of line, that the amount of business the First National Bank of Denver does in Greeley could increase?

A. I presume that's possible, yes.

THE COURT: You mean at the present time?

[776] THE WITNESS: Yes, sir. That is—that assumes that there is an active competitor in the Greeley area, that the First National Bank is——

Q. So, just so you know what the question is, I think——

A. I think the question that was asked was if my pricing were to become, let's say prohibitive, was it possible that the First National Bank of Denver might be a more direct competitor. I suppose any bank in the state could become a more direct competitor if I were to price my product, money, too high. You're asking what I think is a very highly theoretical question, but I will do my best to answer it, sir.

THE COURT: Well, the First National—I don't particularly like these left-handed questions, you know, or back-door ones. I prefer to hit it head on.

Isn't First National an active competitor in your community with your bank?

THE WITNESS: No, sir.

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[777]

REDIRECT EXAMINATION

By MR. METZGER:

Q. Mr. Dean, you stated on cross-examination that you viewed your most direct market as being the City of Greeley. [778] Do you think the market of your bank has changed substantially since 1965 when the bank was acquired by the United Banks of Colorado? Do you think the market being served has changed substantially?

A. Primarily, no, sir.

Q. So that, if your application to acquire the First National Bank of—to acquire the Weld County Bank stated that 18 percent of the deposits and 21 percent of the loans of the Weld County Bank were obtained from outside the "Greeley area," you would say that that probably obtains today, if it obtained then?

A. Yes.

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[779]

DALE R. HINMAN,

a witness called by and on behalf of Defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. METZGER:

THE COURT: Take the witness chair and state your name, address and occupation.

THE WITNESS: Dale R. Hinman, 1926 Glenmuir Boulevard, Greeley, Colorado. President of Greeley National Bank.

Q. (By Mr. Metzger) How long have you been President of the Greeley National Bank, sir?

A. Since 1959.

Q. Mr. Hinman, has your decision to grant or deny a credit, to set a given rate of interest, to charge or to pay, ever been affected by the prospect that you might thereby induce First National Bancorporation to apply for and secure a charter to operate a bank in Greeley?

A. No, sir.

[780] Q. Do you believe that there is room for another downtown commercial bank in Greeley?

A. No.

MR. METZGER: No further questions.

CROSS-EXAMINATION

By MR. SCHOEPKE:

Q. Mr. Hinman, do you mean to say that in conducting your day-to-day operation up in Greeley that you take no account at all of what the banks in Denver are doing?

A. No, I don't mean to say that.

Q. Well, I wonder if you would tell us then, do what the banks in Denver are doing have any effect on your carrying on of your business?

MR. METZGER: Objection, Your Honor. This is not directed to the inquiry on direct examination.

MR. SCHOEPKE: Your Honor, I think that the question went to whether or not he was in any way influenced, and I just think that this is a logical question.

THE COURT: Influenced by the possibility or likelihood that the First National Bank would come into Greeley in making a loan or making any other banking decision?

MR. METZGER: Yes, Your Honor, the witness is equally affected by what the First National City Bank does in New York, but that has nothing to do with the question asked on direct examination.

[781] THE COURT: I agree. Sustained.

Q. Mr. Hinman, are you aware that the First National Bank of Denver solicits business to some degree up in Greeley?

A. No.

Q. You have no knowledge at all that they have loans or deposits originating from Greeley?

A. That's a different question.

Q. Well, would you answer the second question.

A. Yes, they have loans.

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[782] REDIRECT EXAMINATION

By MR. METZGER:

Q. One question, Mr. Hinman. Do your loans in other

sections of Weld County constitute a substantial portion of the loans in that area?

* * * * *

A. I think I know what he means, but I wouldn't have the information to be able to answer that.

Q. You wouldn't know?

A. No.

* * * * *

[783] ROBERT M. GILBERT,

called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

THE COURT: Mr. Gilbert, please state your name, address and occupation.

THE WITNESS: Robert M. Gilbert, 1506 47th Avenue, Greeley, Colorado, president of the First National Bank, Greeley.

DIRECT EXAMINATION

By MR. METZGER:

Q. How long have you held that office, Mr. Gilbert?

A. Since May 1, 1963.

Q. Mr. Gilbert, has your decision to grant or deny credit at a given rate of interest to charge or to pay ever been affected by the prospect that you might thereby induce First National Bancorporation to apply for and secure a charter to operate a bank in Greeley?

A. No, sir.

Q. Do you believe there is room for another commercial bank in Greeley?

A. No, I do not.

[784] MR. METZGER: No further questions.

CROSS-EXAMINATION

By MR. SCHOEPKE:

Q. Well, Mr. Gilbert, just to fill out the record, you are the president of the First National Bank of Greeley, which is the subject of this litigation and is the subject of the proposed purchase by First National Bancorporation of Denver, is that not correct?

A. Yes, sir.

* * * * *

[785] LARRY DEBELL,

called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

THE COURT: Please state your name, address and occupation.

THE WITNESS: Larry DeBell, 5024 West 34th, Denver, Colorado, and I am senior vice president and director of personnel at First National Bank of Denver.

DIRECT EXAMINATION

By MR. WILLIAMSON:

Q. Mr. DeBell, what is the function of the personnel department at the First National Bank of Denver, First National Bancorporation?

A. The function is to primarily provide support services for all of the departments in the bank, those support services to attract, develop and retain management and clerical staff.

Q. Do you have an opinion as to whether or not you can characterize the First National Bancorporation as being people [768] oriented?

A. Yes, I think I can say that, definitely.

Q. What are your support services designed to accomplish?

A. Primarily to provide management succession, for one thing. Secondly, to train and develop the entire staff, to promote the well-being of the bank, and to understand the complexities of the law, to understand the complexities of the technical changes that go on in each individual department.

Q. Well, in addition to the staffing functions of both the officer and nonofficer categories are planning and control major considerations of the personnel department?

A. Yes.

Q. Would you please amplify upon that.

A. Well, planning and control takes on several aspects, the planning and controlling and the delivering of competitive wages, competitive benefit structures, the planning and controlling of training and education, so that we foresee the needed management that will be needed in the future so that we control our staff to progress into certain high level jobs that will maintain the——

Q. Is a continuing educational program deemed to be a necessity by your employer?

A. Yes, absolutely. We have a whole division of the personnel department dedicated solely to the training and [787] education of all levels of our staff.

Q. Is it fair to say that the skills are continually updated?

A. Yes, the major skills or the major educational processes are continually updated, and it is a constant every day kind of process as it goes on.

Q. Are any of these personnel functions and support functions translatable into affiliated members of the holding companies?

A. Yes, we can provide that same type of service for our affiliates and have in many cases. Many of the staff that were trained and educated within our group are now members of the affiliated banks.

Q. How are these functions today generally handled by country banks?

MR. BRENAN: Excuse me, Your Honor, I might object. There is no foundation as to how Mr. DeBell would know as to how country banks would handle these functions.

THE COURT: Do you know about this? Do you know the answer of the question?

THE WITNESS: I think from being a member of the American Bankers Association, Personnel Administration and Management Development Committee, for three years, I have had an opportunity to talk to small banks throughout the United States on many times.

[788] THE COURT: All right, go ahead.

A. Yes, I think in most banks the smaller banks and those that I have visited personally in the state and those that I worked with through the American Banks Association Personnel Administration and Management Development Committee, it is a part-time situation of an operating officer. Thereby the people planning activities are really a necessity of operational expediency, as you might call it. That is, there really isn't a lot of people planning, and it is a part-time situation so the operational kind of things that go on in banks take precedence over the people planning, so there is really very little of this in country banks.

Q. What would you consider the First National Bancorporation's advantage over the small banks in handling this problem?

A. Well, I think in each area that we break into as to training and education and employment services and payroll and benefit administration that we have experts in the field. We have people who are totally dedicated to each separate area and may become specialists in their field and can stay abreast of the new techniques in training and education, for example, can stay abreast of the laws, particularly those developed for the public good, you might call them, the civil rights legislation, the equal pay act, and so we really get a handle on these type of things that we can pass on to [789] affiliates.

Q. What would you say are the major advantages that might accrue to a bank joining a holding company such as the First National Bancorporation?

For example, do you have a complete benefit package?

A. Yes, I think in each area that we have—well, in the wage and benefit administration we have a complete integrated benefit package, payroll package, that's updated annually and at least every five years we bring in a team of experts not only from the bank but from the outside to assist us in bringing us to date on all the latest kinds of benefits and payroll administration ideas, and so we can restructure at least every year on a more formal basis or on a less formal basis every five years, and I think, secondly, they are staying abreast of the legislation, wage administration, that affects personnel administration, is merely a full-time job and I think we can bring this to——

Q. Is this your standard approach to benefit administration interpretation?

A. I don't think in most banks you would call it a standard approach. I think in many of the larger banks, but I think payroll——

Q. I am specifically keying my question as to whether this is a standard approach that you would make available to a member which became affiliated with your holding company.

[790] A. Oh, yes, which we do now, yes.

Q. Is part of your wage administration view implemented by a formal job evaluation program applicable to nonofficer jobs?

A. Yes, we have had formal job evaluation for many years, and it too is updated as needed and just was as recently as last October an entirely new plan was imple-

mented for the clerical, the technical and professional and supervisory staff, nonofficer staff.

Q. Do most small banks operate without a formal job evaluation plan?

A. Most of the small banks that I have come in contact with do not have a formal job evaluation.

Q. Is one of the aspects of the formal plan facilitating meeting requirements of federal equal pay for the equal work law?

A. Absolutely.

Q. What is the major thrust in developing community resources for applicants as vacancies occur on your staff of both First National Bancorporation and its affiliated members?

For example, do you have a substantial applicant referral service?

A. Yes, we have a number of ways that we do that. We do it by association with public and private employment agencies. We do it by association with a number of social agencies that [791] are interested in placing personnel into the banks. We particularly have been very active in the National Alliance of Businessmen's Jobs program, which seeks to take the hard core unemployed and place them in industry. We have been quite active in that since it was formed in Denver and have been a member of that for four years, so the development of the community resources is a responsibility of the employment services and one which I actively engage in, too.

Q. Does the employment services division assist in the application of Title 7, Federal Civil Rights legislation of 1964?

A. Yes, the employment services division is charged specifically with that. I am delegated as the officer to run the program, but the employment services we have one person who concentrates in developing the minority community resources and employment of the minority community and getting them trained and on our staff and counseling with them on job counseling.

Q. Is it fair to say that you thereby protect the rights of the applicants and the staff members under Title 7 legislation?

A. I think we do a good job with that, yes.

Q. Do you have an alternative action program—affirmative action program, excuse me?

A. Yes, we have an affirmative action program which is [792] required by the Equal Employment Opportunity Section of the Treasury Department. It has been active and fully implemented as far as we are concerned at this point.

Q. What role does your separate education and training division play in providing educational opportunities for minority members?

A. Well, of course, our policy generally are across the board. Anyone that is a staff member of our bank can take advantage of all the educational opportunities. To name a few, we have all—all people who work in our bank without high school degrees can come in on company time and we bring teachers over from Opportunity School. We help them study the specific courses and then they can go to Opportunity School and take their examinations and get a high school diploma, for example.

The banking industry, in addition, has an organization called the American Institute of Banking. It is the largest educational association in the United States, and all one need do is to have a membership and we will pay half of that, attend the classes and pass and then the bank will pay the entire fee for that kind of thing.

In addition, we have what I think are some unique programs in supervisory awareness programs, that is keep our staff aware of the needs and desires of all people that are in an integrated staff, as we have.

[793] Q. It is your opinion then and is it a fair conclusion that the results of these various programs that are people oriented are that you are not only able to attract all people based on their individual skills and in short retain them, retain them for the bank?

A. Yes, I think we have that.

Q. Is one of the problems, on the other hand, the small country bank's problem is its ability to maintain continuity and depth of management?

A. It would be my opinion that's true.

Q. Is one of the advantages of the fact that you have a holding company structure the ability to have transfers between organizations?

A. Yes, I think all of our policies and all of our programs and all of our benefits, our wage administration, our

pension plan, profit sharing, are all under the umbrella of the holding company. Thereby we have the flexibility of transferring or offering the transfer of any affiliate within that organization without losing seniority, without losing title, without losing any of the benefits, so it is a very flexible umbrella whereby people can transfer.

Q. Have you from time to time had any compliance review with respect to the civil rights legislation?

A. Yes, we just recently completed a compliance review with the Treasury Department.

[794] Q. Is it your policy to simply meet the minimum compliance, or in the words of the Secretary of Treasury, do you walk that extra mile?

THE COURT: Oh, brother.

MR. WILLIAMSON: Your Honor, I have here—that language is not mine, but David Sawyer, Director of the Equal Opportunity Program.

THE COURT: Well, do you want to answer that?

A. Well, I think we have that reputation generally, in that we have made special efforts and that we did get started very early in the game, long before civil rights was actual law, to provide this type of integration, yes.

MR. WILLIAMSON: Mr. Schoepke has made a very good suggestion. Since I have made reference to it, I would like to mark for identification a letter dated April 26, 1971, David A. Sawyer, Director, Equal Opportunity Program of the Office of the Secretary of the Treasury, to First National Bancorporation, First National Bank of Denver.

* * * * *

[795] THE COURT: It will be received.

(Defendants' Exhibit 79 for identification was received in evidence.)

Q. Do you have an opinion as to whether or not these various people oriented services, this people oriented capacity of the First National Bancorporation, First National Bank of Denver, as to whether or not this could be transferred to correspondent banks?

THE COURT: He has already answered, it seems to me, haven't you?

THE WITNESS: He asked about affiliated banks, the first

time, Your Honor. I think this time he is talking about correspondents.

THE COURT: Okay. Be very difficult, I suppose?

A. Very difficult and in a very, very limited way, because there is really no follow-up in this kind of thing, that's right.

MR. WILLIAMSON: I have no further questions, Your Honor.

CROSS-EXAMINATION

[796] By MR. BRENAN:

Q. Mr. DeBell, in connection with the last question, isn't it true a number of the things you have mentioned are offered as services to correspondent banks, for instance, the pension and profit-sharing plans and the like?

A. By our bank? No.

Q. Yes.

A. No.

Q. Your correspondent bank department does not offer that service to correspondent banks?

MR. METZGER: Objection, Your Honor. The correspondent banking department of the First National Bank of Denver offers no services at all.

[797] THE COURT: At all? None at all?

MR. METZGER: None at all.

THE COURT: Does that answer your question, you think?

THE WITNESS: We do not offer pension and profit-sharing services to any correspondent bank.

MR. METZGER: Your Honor, so the record may be clear on this point, the Trust Department of the First National Bank of Denver is a substantial seller throughout the United States of pension and profit-sharing plans for the benefit of customers of whatever kind, wherever located, who wish to buy pension plans. But this has nothing to do with this witness's testimony with regard to his pension and profit-sharing plans.

MR. BRENAN: Perhaps there was some confusion.

Q. Do you know whether the correspondent department through the Trust Department of First National Bank of Denver assists the country banks in establishing pension and profit-sharing plans?

A. In a general way I'm aware of that.

Q. Are you also aware that the correspondent department

of the First National Bank of Denver, through itself or through another department of the bank, offers a personnel placement service to correspondent banks?

A. I'm not aware that it's a formal personnel placement [798] service, no.

Q. But they do offer some kind of assistance in getting personnel for corespondent banks?

MR. WILLIAMSON: I'm going to object to the question as being very vague, unless counsel can be more concrete in what he's asking.

THE COURT: Overruled. If he can't answer, he can say so.

A. I'm aware that, as resumes come in the bank, that if we get the permission of that person sending the resume to distribute his resume to a correspondent bank so that, you know, we're aware if there is an opening in Glenwood Springs and they say, if you get any applicants, then we would ask the applicant if it's all right to forward that or photostat that. But that kind of service only which is not a very formal type of program at all.

Q. Well, are you personally aware specifically of services of the correspondent—that the correspondent banking department offers to its correspondents? Or is that outside your bailiwick?

A. Well, I'm more familiar with the lending functions because I am a former commercial loan officer and through that medium I do know of their lending functions.

Q. But you don't have specific knowledge as to all of the services offered correspondent banks?

[799] A. Well, I have been away from that for nine and a half years so I'm not fully aware of them.

Q. Mr. DeBell, do you consider the First National Bank of Greeley a small bank?

MR. WILLIAMSON: Objection, Your Honor. This is beyond his capacity.

MR. BRENAN: On direct he was constantly referring to small banks.

MR. WILLIAMSON: He was referring to country banks.

THE COURT: Overruled.

Q. You may answer.

MR. WILLIAMSON: If you know.

A. Well, there are some 14,000 banks in the United States

and where they stand in the hierarchy of banks in terms of —I don't know specifically what frame of reference you have.

Q. Well, my frame of reference was on direct examination a number of times the term small bank was brought up with regard to whether or not they provide the kind of services that your department provides the First National Bank of Denver.

MR. WILLIAMSON: Objection.

A. Small, in terms of number of people, is my frame of reference.

MR. BRENAN: No further questions, Your Honor.

[800] MR. WILLIAMSON: No questions.

THE COURT: You may be excused.

(Witness excused.)

MR. CLOSE: The defendants would like to call Ronald C. Harris to the stand.

RONALD C. HARRIS,

a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. CLOSE:

THE COURT: Give us your name, address and occupation, please.

THE WITNESS: My name is Ronald Harris. I live at 3025 South Race in Denver. I am a Vice-President of the First National Bank of Denver, where I have been employed for 15 years. I am in the operations and administration department directly responsible for the operating and administrative divisions. I report directly to the senior vice-president and cashier who is the department head of that department.

Q. Thank you, Mr. Harris. Are you well acquainted with the function of the administrative and operations department of the First National of Denver?

A. Yes, I am.

Q. Would you in your own words then briefly tell us [801] about these functions?

A. Yes. The administration part really refers to what I would term administrative services. Administrative services being the purchasing, the insurance portfolio, the maintenance department, PBX, various administrative services that cut organizational lines. The operations functions can be divided, I think, in four divisions: one would be the data processing division. That division is primarily responsible for providing data processing systems and services. The check processing division is a division that is primarily responsible for clearance and collection of—primarily for our corporate and individual customers' checks and, in addition, clearance for bank customers.

The bookkeeping division is the division primarily responsible for the maintenance of our customers' checking accounts and preparation of statements.

And the customer services division, which is primarily responsible for new accounts, tellers, various customer contact areas in the bank.

Q. Thank you, Mr. Harris.

Are you in general acquainted with the parallel functions of your department at the First National Bank of Greeley?

A. Yes.

Q. Now, then, Mr. Harris, assuming the acquisition of [802] the First of Greeley is permitted, what advantages in the area of administration and operations would accrue to the First National Bank of Greeley which are not now present as a result of the mere correspondent relationship which exists?

A. Well, I think—let's see. Let's start with data processing. I think in the data processing area there are probably many. But a couple of things that come to my mind are our general ledger system that we have developed with the accounting division or the accounting division developed with the data processing division which is the general ledger system that was developed primarily for the First National Bank of Denver and other affiliate banks of the First National Bancorporation.

This system was not designed as a service we would offer to correspondent banks, as others are. But it is a system that we think would be of substantial help to the First of Greeley in knowing their financial position on a daily basis.

Another system in the data processing area that comes to mind is our cost accounting system, again developed with

the accounting division, and that is a system that was designed primarily for the function of the First National Bank of Denver, again, not with any intent of offering it to correspondent banks but as a system that enables the department head or division head to know current costs of [803] operation in his department on a detailed basis. Also, working as a budgeting tool so that they can budget, show actual expense and show variances. I think, for example, these two systems can provide a bank like the First of Greeley with some knowledge and that it will better help them operate the bank. Of course, the benefits of that would then accrue to the customers of the bank.

In the administrative area, I think that we could provide some real assistance to the First of Greeley in the area of equipment purchases. We have people that spend nearly full time reviewing equipment that is available on the market, the price of that equipment, what equipment fits specific operating needs best and because we have people do this full time, our knowledge about what equipment is available on the market and the prices of equipment are firsthand to us. I think we could pass some of this knowledge on to the First of Greeley.

Naturally, you know, if we can help them find some equipment that will do better jobs for them in specific areas, help them improve their operations, then this might help them to stabilize operating costs and pass these benefits to all of their customers in the Weld County area.

Q. Mr. Harris, if I may, would you also do this for nonbank customers?

A. As a practical matter, no, because we are not [804] really in the business of equipment consultation to other banks. So we really—we don't do that as a practical matter for other banks at all. There might be an example, certainly, where an equipment salesman who was overzealous or anxious to sell equipment might be in another bank selling his equipment and ask that banker to call us for a recommendation saying, "We understand you bought that equipment. Do you like it?" Certainly, we don't refuse to answer in those cases. But we don't offer this as a consulting service.

Another thing in the administrative services area I think is our insurance package or portfolio or policies. Insurance in banks is a big item. It's important to know what insurance you have, to be certain you have the right coverage, that you know where to get, you know, insurance, and a lot

of times it's difficult for banks, I'm certain, to be fully aware of all of the coverages they should have to protect the bank and its depositors' money. We again have people that spend full time in the area of insurance in our bank that are aware of what insurance coverages banks should have, where they obtain the insurance, what they should pay for it, what proper coverage is, and again I think this is something we could pass on to the First of Greeley. But, again, we don't offer this as a service to other banks. We are not in the business again of insurance counseling. But I think this is a significant area that we could help [805] the First of Greeley to be certain that they are in good shape on their insurance program.

In addition, in the administrative services area, I think of the security facet. Security of banks today is an important item, with civil disorder, with attempted robberies, with robberies, with fraud, with people passing bad checks, losses that banks are experiencing. We have two full-time people in the area of security that are responsible for maintaining our security systems in the bank, our protective systems. They really spend full time working out procedures for cashing checks of customers and for opening new accounts. These are continually brought up to date and to see that they are in good shape. It's an important item, I think, for banks today. Again, this is something we could help the First of Greeley with, a service to help them with their protective procedures, their alarm systems; all kinds of things in their banks that would help them in a security matter. Again, we don't offer security procedures or services as a consulting service to other banks. We're just not able to do that. And I am not certain it would be profitable for us to do that. So we are able to provide this for our bank and members of the Bancorporation. I think, in addition to all those things I have mentioned, just the general area of helping to train and help people and help to install operating systems or any new ideas in operations in a bank [806] like the First of Greeley, is something that we can do in the operations area of our bank. We have people experienced and trained in specific areas of bank operations who have had many years of experience who have implemented new systems. I think we can pass these on to people to the First of Greeley.

One last thing in addition to all those would be the auditing function. Auditing works very closely with operations

in a bank in that the auditors really evaluate and perform the check and balances systems of the operations department's procedures and systems. The auditors are aware of the systems and procedures and whether or not there are loopholes in them; whether or not there are ways that fraud can occur, et cetera. So, the auditors really work very closely with the operations people in helping the operations people maintain good systems and good procedures. And, that will protect our depositors' money.

We have a depth of knowledge and experience in our auditing division and I think our auditors could be of great help to the auditors at the First of Greeley. Again, providing an auditing service is not something that banks normally offer to other banks and we certainly don't, to correspondent banks or anything. We just don't have the staff or intend to offer those kinds of services. But, banks within a bank corporation—I think this is definitely [807] a service we could offer to the First of Greeley.

Q. Is there anything else in that area that you wish to speak about, Mr. Harris?

If not, thank you very much.

MR. CLOSE: Your Honor, we have no further questions.

CROSS-EXAMINATION

By MR. SCHOEPKE:

Q. Now, sir, you have been testifying about various benefits that you think you would be able to give to the Greeley bank should there be this affiliation. I would ask you—how familiar are you with the services offered by the correspondent banking department?

MR. METZGER: Objection. Counsel is trying to characterize something to which there is no evidence. There are no services of the correspondent banking department. There is nothing in this record to support it, that the correspondent banking department offers any services to the banks other than the services of Mr. Harris and his operation. If he wants to speak to this, then let him speak to that question without going around O'Leary's barn.

MR. SCHOEPKE: Well, he has mentioned on several occasions, Your Honor, some of the advantages that he says accrue to—and he has mentioned that this wouldn't be available quite as good under the correspondent banking [808] department.

THE COURT: He didn't say that.

THE WITNESS: I don't think I said that. I said they don't offer any of these administrative services.

MR. SCHOEPKE: —to correspondent banks. So, you might ask him whether there are any administrative services he is offering to correspondent banks. Then, we would be on track, I believe.

Q. Well, are you familiar with any of these services that are offered by the bank to its correspondents?

A. I am not really sure I understand your question. Do you mean—Well, maybe you can restate it.

THE COURT: Does the bank offer any administrative services whatever to correspondent, underline, banks?

THE WITNESS: No.

Q. (By Mr. Schoepke) You mentioned data processing as one of the features that you thought would be a beneficial one. Are you aware of the fact that—I mean do you know whether or not Greeley—the First National Bank of Greeley has facilities to data processing?

A. They do not have their own data processing facilities.

Q. Well, that is not my question. Do they have availability to data processing services?

A. From another bank?

[809] Q. Yes.

A. Yes, they do. All banks in the state have that availability.

Q. Are you aware of the fact that they have a data processing of doctor bills which is run by an outfit here in Denver called Medak?

A. No, I am not.

Q. But Greeley does not have to depend upon the First National Bank for data processing? There are many other organizations in that field, are there not?

A. Yes, there are other banks and services that provide data processing services in the state.

Q. I would ask you if you are in any way, in your preparation for your testimony here—did you have any occasion to read over the defendants' answer to Interrogatory 22? This is now just for identification. Subparagraph C, of which says, "Describe each correspondent service offered by each Bancorporation subsidiary bank to each of its correspondent bank customers in each of the years 1967,

1968, 1969, and 1970 to date." Did you by any chance review that interrogatory answer, Number 22?

A. No, sir, not to my knowledge.

Q. And I might just say for further identification, it is Plaintiff's Exhibit Number 26 in evidence.

May I show it to you and ask you if you have looked at it?

[810] Q. I show you now, Mr. Witness, Plaintiff's Exhibit——

MR. METZGER: Mr. Harris.

Q. ——Number 26 in evidence and ask you if you reviewed that document in any way in connection with the preparation—with your preparation to take the stand this morning?

A. No, I did not.

Q. Now, the advantages that you have been telling us about this morning, sir, have been concerned with the advantages which you think First National Bank of Denver would give to the Bank of Greeley, is that not correct?

A. Yes, I think I was speaking to the advantage of things we could offer.

Q. Advantages to the bank rather than advantages to the public?

A. Well, I think that some of the advantages I spoke to would accrue to the customers of the First National Bank of Greeley.

Q. On a trickle-down theory?

A. I didn't say trickle-down theory. I'm not sure what you mean by that. I said, through improved operations.

Q. Do you feel that these advantages to the bank would ultimately reach the public?

A. I said the customers of the First National Bank of Greeley in the—and the Weld County area.

[811] Q. But the fact remains, does it, that the specific immediate advantages that you have been talking about here are designed for the benefit of the banks, isn't that the case?

A. Well, no, I'm not sure I really said that. I said that, by, you know, improving information availability to the people that run the bank, by improving the security systems, other things of that nature, you know, that helps the bank in its operations, which in turn accrues to the benefit of the customers of the bank. That's what I said.

[812] Q. That's an assumption on your part, is it not?
A. That's my opinion.
Q. The last part?
A. That's my opinion.

MR. SCHOEPKE: No further questions, Your Honor.

REDIRECT EXAMINATION

By MR. CLOSE:

Q. I just have two questions. I wasn't sure whether you answered Mr. Schoepke's question yes or no. I thought you answered a certain question no, which I think probably in your view you might care to revise, and the direct question is does the First National Bank of Denver in the area of data processing provide data processing to correspondent banks and others?

A. Yes, they do. I got confused on that, because I thought the question was asked "Do you provide administrative services?" As I have been speaking to administrative services, I was speaking to insurance, purchasing and securities. When I spoke to operations functions, I included in that, not in administrative, data processing, and we most certainly provide data processing service.

Q. And one last question. Are there any nonbank organizations which you know of which provide data processing to banks or could so do?

A. Yes, there are.

[813] MR. CLOSE: No further questions.

THE COURT: Do you object to Mr. Harris being excused from further attendance?

MR. SCHOEPKE: No objection, Your Honor.

THE COURT: You may be excused.

(Witness excused.)

MR. METZGER: Your Honor, we call Mr. Richard Brown to the stand.

THE COURT: Will Mr. Brown's testimony be lengthy?

MR. METZGER: No, Your Honor.

THE COURT: Good. Come forward, Mr. Brown, please.

RICHARD P. BROWN

called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

THE COURT: Please take the witness stand and give us your name, address and occupation.

THE WITNESS: My name is Richard P. Brown. My address is 3403 South Race Street, Englewood, Colorado. I am senior vice president and executive trust officer of the First National Bank of Denver. I am also a member of the board of directors and the executive committee of the bank, and I am a member of the board of directors of the First National Bancorporation.

DIRECT EXAMINATION

By MR. METZGER:

[814] Q. Mr. Brown, you are head of the trust department of the First National Bank of Denver?

A. Yes.

Q. Do you also hold any position in the American Bankers Association?

A. I am the president of the Trust Division of the American Bankers Association.

Q. Could you tell us, Mr. Brown, how large your department is at the First National Bank of Denver and what it generally does.

A. We have about 203 officers and employees. Of that number 37 are officers of the bank. We handle about 4800 accounts in the trust department. Of those we have full or partial investment responsibility for about 3600. The total assets of the trust department with respect to which we have some degree of investment responsibilities are approximately 636 millions, and we have in addition to that in accounts where we have no investment responsibility approximately 1 billion in assets within the department.

Q. What do you call accounts to which you have no investment responsibility?

A. Safekeeping, custody, escrows.

Q. What kind of services do you offer to the general customer, sir?

A. Well, we think we offer the entire gamut of trust [815] services. In the field of what's commonly called personal trusts, we act as executor or administrator of decedents' estates, as trustee under a will, as guardian or conservator of the estate of persons under legal disability. We act as trustee under agreements, so-called living trusts, trustee under insurance agreements. We act as investment management agents for both individuals and for corporations. We

act as trustee under business life insurance trusts. We act as custodian or safekeeping agent for the securities of individuals. In the corporate field we act as stock transfer agent, registrar, trustee under corporate indentures, as paying agent for bonds, dividends paying agent for corporate stocks. We act as depositary under plans of corporate reorganization or where exchanges of one security for another security are proposed or carried into effect. We act as depositary for the redemption of corporate securities. We counsel with customers, their attorneys and other advisors, with respect to the planning of their estates and their financial affairs.

Q. Mr. Brown, do you have any trust business from Weld County?

A. Yes, sir.

Q. How many accounts would that be, sir?

A. I think we have about 13 accounts.

Q. Do you solicit business from Weld County?

A. Not actively, no, sir.

[816] Q. Why not?

A. As a general rule we have found that the business that we would like to have from Weld County comes to us fundamentally because of the recommendations of attorneys or other business advisors in Weld County, and that in the area of small businesses it has been our general experience that individuals living in Weld County would prefer to do their trust business with banks in that county.

Q. Would it be economical for you from the First National Bank of Denver to seek to solicit that business in Weld County?

A. Not in the broad sense, no, sir.

Q. Do you run into any problems in agricultural areas of the state with regard to their attitude toward Denver banks?

A. Well, I would just repeat we have generally found they prefer to do business with banks in their own communities.

Q. Mr. Brown, have you had an opportunity to examine the trust department of the First National Bank of Greeley?

A. I have, sir.

Q. And could you tell us, sir, whether or not in your judgment this trust department is adequate to the needs of Weld County?

A. I don't feel that it is. The trust department calls for

a substantial number of skills and the revenue that's produced by the trust department of the First National Bank of [817] Greeley isn't adequate to permit them to employ the people with a range of skills that I would feel are needed for proper handling of trust business in that community.

Q. Would you take it as a personal responsibility to upgrade those skills should the First National Bank of Greeley become affiliated with the First National Bancorporation?

A. Yes, sir, we feel we could help the First National Bank of Greeley very materially in the trust area.

Q. Do you feel that this help could be given to a correspondent upon the same order of priority?

A. No, simply because of the fact that they were a correspondent of the First National Bank of Denver, no.

Q. That a correspondent relationship is not lendable to the kind of aid that you are referring to?

A. It is not a part of the correspondent relationship as we see it, Mr. Metzger. The relationships of bank's correspondents are with the correspondent bank department of the bank. They are not with the trust department. They do not involve commitments to counsel or to assist the trust department of the correspondent bank.

Q. You do not view this as a function of your department?

A. No, sir.

MR. METZGER: No further questions.

CROSS-EXAMINATION

[818] By MR. BRENAN:

Q. Mr. Brown, are you aware that the First National Bank of Greeley advertises that it offers a complete line of trust services?

A. No, I'm not.

Q. Mr. Brown, do you or anyone else in your department ever have any contact with someone in a correspondent bank with regard to trust services?

A. Yes, we do.

Q. So, then it would be fair to say that you do advise correspondent banks in these matters.

A. Upon their request and as far as we are able to within reasonable limits.

Q. Mr. Brown. I believe on direct you stated that the trust department of the First National Bank of Greeley is not adequate to meet the needs of Weld County, but you also

stated that the people in Weld County like to deal with the banks in their community for trust services. In this connection, how would you square those two statements? Wouldn't it then be adequate to the needs of Weld County?

A. No, I don't believe so. In the investment field, for instance, the First National Bank of Greeley does not have a trained investment man. They do not have the sources of investment materials that we feel that a trust department should have. So far as I am aware of their investment performance [819] it has not matched that of banks which are better qualified and have better trained investment personnel. I think this is true of smaller banks in general. I suppose there may be what we would consider to be needs on the part of those who place funds for investment with banks of that size which conceivably the customers themselves are not aware of.

Q. Does not First National Bank of Denver offer an investment counseling service to its correspondent banks?

A. No, we do not offer such a service. We render it to one bank.

Q. Which bank is that?

A. That's the Greeley National.

Q. Do not Weld County residents at present have available to them for trust services the facilities of the United Bank of Denver through its affiliate in Greeley?

A. They certainly have available to them the services of the United Bank of Greeley. I do not know to what extent the United Bank of Denver supplies services to the United Bank of Greeley.

Q. Do you know to what extent the Affiliated Bankshares Corporation provides trust services through its local affiliates?

A. I do not.

Q. Do you know if Affiliated Bankshares offers any trust services through its affiliates?

A. I know that the Greeley National Bank, which is a [820] member of Affiliated Bankshares of Colorado has a trust department. That bank holding company is a composition of approximately 13 banks, as I recall it, and I have no awareness of the bank corporation offering any supplement to the trust services which are provided by the individual banks which it controls.

Q. In otherwords, you just don't know whether they do or do not, is that right?

A. That's right.

MR. BRENAN: No further questions.

REDIRECT EXAMINATION

By MR. METZGER:

Q. Mr. Brown, would it be fair to say with respect to correspondent banks, you respond to specific inquiries but offer no direct services generally?

A. That's right.

Q. And your relationship with the Greeley National investment advisory service is a special one unique to that particular bank in the entire country for your bank?

A. For our bank, yes. We have no similar arrangement with any other bank.

Q. Does this service arise out of in part the fact that you trained the senior trust officer of that bank?

A. That is so.

* * * * *

[823] JACK R. THOMAS

a witness called by and on behalf of the defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. METZGER:

THE COURT: Take the witness chair. State your name, address and occupation, please.

THE WITNESS: J. R. Thomas, 12925 West Sixteenth Drive, Golden, Colorado, 80401. My occupation is regional administrator of national banks, 12th National Bank Region, headquartered in Denver, Colorado.

Q. (By Mr. Metzger) Mr. Thomas, what is the function of a regional administrator of national banks?

A. The main function of the regional administrator of national banks is to assist the comptroller in supervising and regulating the banks in his particular region.

Q. And what is your region, sir?

A. It is composed of the States of Arizona, Colorado, New Mexico, Utah and Wyoming.

Q. How many people are employed in your region by the comptroller of the currency, Mr. Thomas?

[824] A. 91.

Q. And what functions do they generally perform?

A. We have 81 examiners in the field examining banks, investigating special situations. The remaining are employed in the Denver office, made up of typists, stenographers and staff men.

Q. And all of these are under your supervision?

A. Yes, that's right.

Q. In the course of this supervision, Mr. Thomas, is it part of your responsibility to familiarize yourself with the capability of the management of the banks under your supervision?

A. Yes, sir.

Q. And in the course of these supervisory responsibilities is it part of your duty to familiarize yourself with the level and the vigor of competitive activity in the communities in which you have banks?

A. Yes, sir.

Q. Mr. Thomas, as a technical matter, when a national bank is to be acquired by a bank holding company, do you have any statutory duties with respect to the competitive effects of that proposal?

A. Yes. It is up to us to furnish the comptroller of the currency in Washington our recommendations on the competitive angle of the application.

[825] Q. And did you make such an assessment of the proposed affiliation of the First National Bank of Greeley with the First National Bancorporation?

A. Yes, I did.

Q. What was that assessment?

A. My assessment of the proposed acquisition is that it would not be anticompetitive.

Q. Did you make an affirmative decision that it would be procompetitive?

A. I don't make the decision. I recommend.

Q. Pardon me, sir. Did you make an affirmative recommendation?

A. Yes.

Q. And was that recommendation based in part upon your judgment as to the management capability of the First National Bank of Greeley personnel?

A. Yes, it was.

Q. And what was that judgment?

A. It's my opinion that the management capability of the First National Bank in Greeley is weak in the matter of management succession.

Q. Beyond the first matter——

THE COURT: What was his answer as to whether he assessed the procompetitive aspect? Did you give an answer on that?

[826] THE WITNESS: I thought I did, sir.

Q. Would you repeat yourself.

THE COURT: Your answer was that it wasn't your job to make a decision.

THE WITNESS: Yes, I just recommended, Your Honor, and I recommended that it would not be anticompetitive. It would be procompetitive.

THE COURT: Okay.

[827] Q. And what is your judgment as to the quality of the management at the First National Bancorporation?

A. It is my judgment that they have excellent management.

Q. And do you believe that this affiliation will permit an improvement in the management structure of the First National Bank of Greeley?

A. Yes, sir.

Q. Was this one of the bases for your favorable recommendation?

A. Yes, it was.

Q. Mr. Thomas, I show you Defendants' Exhibit Number 28, and direct your attention to the number of banks in the State of Colorado between 1900 and 1920 and ask you to tell me how many banks there were in 1900?

A. 117.

Q. And how many in 1920?

A. 404.

Q. And what was the impact in the next ten years between 1920 and 1930 on the number of banks in the state?

A. It dropped down to 270 in 1930.

Q. And were there further failures between 1930 and 1940?

A. Yes, in 1940 there were 146 state and national banks in Colorado.

[828] Q. Did these bank failures have repercussions in the communities involved?

A. Yes, there are definite repercussions. There is loss to the stockholders, loss in confidence in banks in general, and not only in the particular community where a specific bank failed, but in the whole general banking community, throughout the state.

Q. Has the addition of the Federal Deposit Insurance Corporation alleviated this situation?

A. Somewhat. It helps the depositor who now—who has less than $20,000 deposited. It doesn't help the stockholder nor does it help the banking image.

Q. So that in your judgment failures are still an important community disaster?

A. Yes, they are.

Q. Is this probability of failure an important factor in your judgment on the granting of new charters?

A. Yes, that is considered and we call it—it is one of the important things.

Q. Who can grant a bank charter in the State of Colorado, Mr. Thomas?

A. The State Banking Board for a state-chartered bank or the Comptroller of the Currency for a national bank.

Q. I show you, Mr. Thomas, Defendants' Exhibit Number 39, which is a list of the deposits of all banks in the City [829] of Greeley between the years of 1950 and 1970, and I ask you to tell me whether or not the relative growth of the State Bank of Greeley since it was converted from an industrial bank in 1965 would be a factor in your judgment as to whether or not to grant a charter in the City of Greeley?

A. Yes, it would.

Q. Why is that, sir?

A. Well, we are not going to protect any bank from active competition. We are not going to subject a bank that is obviously having difficulty amassing deposits to another new entrant. It would have a very definite impact on our decision.

Q. In assessing the competitive effects of this proposed acquisition, Mr. Thomas, did you find it necessary to evaluate the prospects of the grant of a de novo charter in Greeley, Colorado?

A. Yes.

Q. And what was your judgment as to the prospects of your recommendations with regard to a proposed de novo charter in that community?

A. It was part of my recommendation that I could not see a need of a new national bank in Greeley.

Q. And immediately or in the foreseeable future or what period of time?

[830] A. Not in the foreseeable future. Definitely not immediately.

Q. And as to any date beyond the foreseeable future, about what time period do you call that?

A. Well, I think upward to five years is the foreseeable future in that particular area, from what I can view.

Q. And you would not care to make any judgments beyond that?

A. Well, then we will have to, if we get an application, take it as it comes and see what the circumstances show. No, I can't—wouldn't make a judgment beyond that, no.

Q. Now, while you are looking at Defendants' Exhibit Number 39, Mr. Thomas, could you tell us what has happened to the market share of the First National Bank of Greeley over the past 20 years?

THE COURT: What exhibit are you looking at?

MR. METZGER: 39.

THE COURT: Okay, go ahead.

A. In 1950——

THE COURT: Is this material that you have knowledge about from your work, this information?

THE WITNESS: Yes, sir, I have knowledge. I did not compute this, though.

THE COURT: You did not prepare this?

THE WITNESS: No, sir, I have general knowledge [831] about the market share.

THE COURT: All right.

Q. Will you tell us what the market shares were in 1950 and 1970 of this organization, sir?

A. In 1950, the market share of all banks in Greeley by First National Bank in Greeley was 49.8, and in 1970 it was 32.6. Those are percentages.

Q. And you were aware of this general decline in market position, were you not?

A. Yes, sir.

Q. And was this decline in market position a factor in your evaluation as to the strength of the organization in question.

A. Yes, sir.

Q. Now, sir, I believe you have addressed yourself to the question of the quality of banking competition in Denver. Could you tell us whether you think this is soft competition or strong competition among the larger banks in the city?

A. In Denver?

Q. Yes.

A. It is tough competition.

Q. Now, would you characterize the competition obtaining in the smaller cities in the state generally, not referring to any specific one?

A. There is competition there. I do not believe it [832] is at the same pitch or the same high level that the big banks have facing themselves in Denver.

Q. Then, Mr. Thomas, is it your judgment that a reasonable movement of the Denver holding companies across the state will have an improvement or a negative factor upon the competition obtaining in specific markets throughout the state?

A. Well, I think if the registered bank holding companies move throughout the state, they will increase and improve the competition in the various smaller towns throughout the state, amongst the banks, that is.

MR. METZGER: Thank you. I have no further questions, Your Honor.

[833] MR. METZGER: Your Honor, I do have one further question.

Q. Mr. Thomas, among the factors you considered in determining whether or not an area can appropriately sustain another banking unit, is the question of the number of people per banking office an important factor in that consideration?

A. Yes, sir.

Q. And you would place some substantial weight on that question?

A. Some, yes.

MR. METZGER: Thank you.

CROSS-EXAMINATION

By MR. SCHOEPKE:

Q. Mr. Thomas, Mr. Metzger discussed with you a bit

on the question of whether a bank failure and repercussions in the community and you indicated, I believe, that that was an important part of your consideration as to whether or not in a given situation you would recommend to the comptroller of the currency to permit new entry.

A. Uh-huh.

Q. And I believe that Mr. Metzger used the term community disaster to describe a bank failure, and I believe you agreed with that, did you not?

A. Yes.

Q. And isn't that generally considered in the banking [834] fraternity as a term of art that bank failure is a community disaster? Would you agree with that?

A. Yes.

Q. Now, then, in your function in recommending to the comptroller as to whether or not in a given situation you would recommend new entry, would you not say that the possibility that you have an interest in protecting the public against bank failures by having too many banks in that particular area?

A. Yes.

Q. And would you not say that the public, the community has a convenience and needs in avoiding the failure of a bank through the entry of too many banks or more banks than the market can support?

A. Convenience and needs to avoid? I don't——

Q. Is it not to the convenience and needs of the community to be served? Is it not in their convenience and needs to avoid bank failures through having too many competitors in the market? Would you agree with that?

A. Yes.

Q. Now, when Mr. Metzger first questioned you, Mr. Thomas, he talked with you about your function. Do you issue the charters that are given to national banks, you personally?

A. No, that's issued by the Comptroller in Washington.

Q. So I assume you and your assistants in your regional [835] office undertake the spadework and make reports to the comptroller in Washington?

A. That's right.

Q. And he may or may not accept your recommendation, isn't that correct?

A. Yes. We recommend. He decides.

Q. Now, this is obvious but—the comptroller of the currency in Washington can change at any moment, can he not?
A. I believe his term is—ends February, 1972.

MR. METZGER: The comptroller of the currency is a statutory five-year term, Your Honor.
MR. SCHOEPKE: Well, I wouldn't push it.

Q. He can find a better job tomorrow, can he not? In other words, you cannot speak for the comptroller of the currency right now, can you?
A. How long he's going to stay on the job?
Q. No, to whether or not he might issue a charter in any given situation.
A. No, it's my recommendation; his decision.

THE COURT: Are you directly under the comptroller?
THE WITNESS: Yes, sir.
THE COURT: Does he give you authorization to testify in these cases, specific authorization?
THE WITNESS: Yes, sir.
THE COURT: So you are here under his auspices then?
[836] THE WITNESS: Yes, I must—I am required to get his authorization, yes, sir.

Q. Now, have you made any blanket announcement as to whether or not there is room in Greeley for more banks?
A. No, sir.
Q. Now, supposing tomorrow you should get an application from some interested parties for a new bank in Greeley. What would you do? Would you just give it back to them and say there is no more room in Greeley for more banks?
A. Well, if they came to me first before they filed the charter, which we recommend, I think I would be negligent in my duty if I didn't tell them what I thought. Then—this is free enterprise. If they wanted to go ahead and file the charter, that was their privilege.
Q. And you would give the charter every consideration I would presume?
A. That's right.
Q. And make your recommendation to the comptroller of the currency and so forth?
A. Right.
Q. Now, in judging a charter in Greeley, would your judgment cover the entire area of Greeley? Or would your opinion as to the relative merits of the application vary

depending upon where in the Greeley area the application was made for?

[837] A. It would be for the Greeley area.

Q. Now, would you say that Greeley at the present time is overbanked?

A. I think it's adequately banked.

Q. Adequately banked? Would you be in a position to say whether or not in the event another entrant were licensed in the Greeley area as you have just described it, would you say that there would be a bank failure?

A. I would be in no position to judge that.

THE COURT: You get failures in areas in which the community is not overbanked, don't you?

THE WITNESS: Yes, sir.

THE COURT: Sometimes you get a failure in a town which has only one bank, I guess?

THE WITNESS: Yes, sir.

THE COURT: They come to my attention occasionally in various ways.

THE WITNESS: That's right.

Q. (By Mr. Schoepke) Well, confining yourself to what I believe is your situation, that Greeley is adequately banked, you—now, everything else being equal, would you say that the entry of a new bank in Greeley would in your opinion lead to a probable bank failure?

A. That's very hard to predict. I don't think I can honestly say that.

[838] Q. Now, in making your recommendation on Greeley, what standards do you use? What do you look into a town like Greeley when you decide whether or not there is room for a new bank?

A. First of all, the capital position required, the background, both biographical and financial of the officers and the proposed directors. We also decide on the convenience and public need for the bank and whether this bank if chartered can be expected to be operated profitably on available banking business in the near future. Those are the main general points.

Q. And in deciding these points do you look into the economic growth of the area?

A. Yes, that's part of it.

Q. And how do you use the economic growth in the area in your analysis?

A. Oh, we read it. We come to a conclusion on what the economic surveys show.

THE COURT: Is that what you mean?
MR. SCHOEPKE: Yes.

Q. Why do you use economic data in determining whether or not to allow a new bank in a market?

A. To prove or to at least suggest whether this bank if chartered can be run profitably once it's open, and available banking business.

[839] Q. In other words, if I may shorten it a bit—the rise in the level of activity you anticipate will be accompanied by a rise in the banking needs of the public, isn't that about it?

A. That's right. If the trends are pointed upward, chances are it will accomplish it.

Q. Whether there will be room for new banks?

A. That's right.

Q. Now, what kind of economic growth data do you consider when you are making your analysis?

A. It depends upon what the organizers want to give to us. Sometimes it's incomplete. Sometimes they're complete. Sometimes it's thorough; other times it isn't. To prove to us that the area can support the bank.

Q. Now, do you confine your analysis of the economic factors simply to what the applicants chose to give you?

A. No.

Q. Or do you go outside and conduct any independent investigation?

A. We send an examiner and an assistant into the field, into the spot where the bankers apply for.

Q. I see. Well, I wonder if I could show you a few of plaintiff's exhibits in this case and ask you whether in your opinion in determining growth factors whether you take these things into account.

[840] May I do that?

A. Fine.

MR. METZGER: May I ask the Court if we can—if we can shorten this up, ask this witness whether or not he thinks the growth of Greeley that he has noted can support another bank?

THE COURT: Do you regard Greeley as a boom area?
THE WITNESS: No, sir, I do not.

THE COURT: He says he doesn't.

MR. SCHOEPKE: Well, Your Honor, may I just, on cross-examination, show him some of our economic growth documents and elicit from him how important or unimportant he thinks they are.

THE COURT: Sure, go right ahead.

Q. Now I show you Plaintiff's Exhibit in Evidence No. 87 which is a population table and ask you if in the course of your examining a new bank application whether you consider that kind of data?

A. Yes, we would consider that.

Q. And would you consider that to be a relevant factor in arriving at a decision as to whether the economy of the area was sufficient to support another bank?

A. From what I know of Greeley, no. We would have to look into the growth of the college to see how that affected the figures.

[841] Q. But you would consider population——

A. Oh, yes.

Q. ——with the growth of the college included?

Now, I show you Plaintiff's Exhibit in Evidence No. 90, and this is on gross sales in Weld County for the last ten years, which you will see have gone up about 281 percent. Would that be a relevant factor in your consideration as to whether——

A. Yes.

Q. ——the economy might support another bank?

A. That's right, yes.

Q. And Plaintiff's Exhibit No. 91 in evidence, Mr. Thomas—this is retail sales from 1960 to 1970 showing an increase of about 97 percent. Would that be a factor that you would take into consideration in deciding whether or not——

A. Definitely.

Q. ——to allow a new bank.

THE COURT: Have we received these?

MR. SCHOEPKE: They are in evidence, Your Honor, yes.

Q. Maybe we can go through them a little more rapidly. 92 and 93—Exhibit 92 is the increase in electrical power consumption in Greeley. 178—an increase of 178 in the last ten years. New telephones in the area—an increase of about 52 percent in the last ten years.

[842] Is that the kind of data that you would consider?

A. Yes.

Q. In your economic analysis?

A. This type would be presented to us for consideration.

[843] Q. Now, this is Plaintiff's Exhibit Number 94 in evidence, postal activity. Would you consider that as a part of an indicia of economic factor in the area?

A. Yes.

Q. Now, here is the number of water taps in the City of Greeley, indicating 36.9 increase in the last ten years. Would you consider that in connection with your appraisal in connection with the economic factors involved in Greeley and the possibility or nonpossibility of permitting a new bank?

A. Yes, they would be considered.

Q. How about Plaintiff's Exhibit Number 97 in evidence, building permits from 1960 to 1970? Is that the kind of indication——

A. Yes, all that is the type of information we would look at.

Q. Now, all of these documents I have shown you, Mr. Thomas, have been concerned with the Greeley city, the city itself. We have in evidence as Plaintiff's Exhibits Number 98 through 101 similar economic data with regard to the Greeley area, which consists of the City of Greeley and its surrounding area. Would you consider that type——

A. Yes.

Q. ——of economic growth data in connection with your recommendation to the Comptroller of the Currency?

[844] A. Yes.

Q. Yes, we also have similar data in Plaintiff's Exhibits Numbers 102 through 111, similar growth data of the kind I have shown you with regard to the City of Greeley. Would you consider that type of economic information?

A. Yes, sir.

Q. In connection with your economic appraisal of the possibilities or the desirability of permitting a new bank?

A. Yes, they would all be considered.

MR. SCHOEPKE: Excuse me, Your Honor, a moment.

THE COURT: Surely.

(Counsel conferred.)

Q. Now, Mr. Thomas, Mr. Metzger showed you Defendant's Exhibit Number 39, which is, of course, the history of

Greeley banking, and in that connection I believe you pointed out that the share of the market of Greeley First National Bank had gone down from 49 percent to about 32 percent.

A. Yes.

Q. Do you recall that testimony?

A. Yes.

Q. Now, and also you will note from this chart, will you not, that since 1950 when this chart or table starts, there have been new entrants into the Greeley banking market, have there not?

A. Yes.

[845] Q. And what banks have been allowed to open in the Greeley market?

A. West Greeley National. Cache National.

Q. And——

A. And I believe the State converted a bank.

Q. Converted from an industrial bank?

A. Yes.

Q. Now, wouldn't they have a tendency to draw some business away and make the market shares of the large banks in the downtown area decrease somewhat?

MR. METZGER: Objection. Counsel is aware of the figures. The figures speak for themselves and those figures say that only the First National of Greeley lost deposits.

THE COURT: Overruled.

A. I believe you asked me if the new banks would have a tendency to decrease the market share of the older banks?

Q. Yes.

A. That would be a tendency, yes.

THE COURT: What do you classify Greeley in terms of economic potential? It is not a boom city.

THE WITNESS: Not a boom city. Moderately steady growth area.

MR. SCHOEPKE: May I have 184, 185 and 186, please, or just 84, 85 and 86?

Q. Well, may I just show you for a moment, Mr. Thomas, [846] Plaintiff's Exhibits in Evidence 84, 85 and 86, which cover the banks in the Greeley area for a period of time. Just to assist you, it starts in 1963 and runs up to 1970. Now, you have indicated in your direct testimony that the

percentile share of the First National Bank of Greeley has dropped, that is, compared with some of the other banks, but is First National Bank of Greeley withering on the vine?

In terms of absolute growth, they are going up, are they not, in deposits?

A. Yes, they have increased the deposits.

Q. Just in terms of Plaintiff's Exhibit 85 in evidence, for example, they have gone in June of 1960 from deposits of about 19 million up to deposits in 1970 of some 39 million?

A. That's right.

Q. About 114 percent, if you would accept my arithmetic.

A. I will accept it.

Q. But they have grown absolutely?

A. Yes.

Q. There is no question about that, is there?

A. That's right. They are larger now than they were in 1950.

Q. Mr. Thomas, I show you Plaintiff's Exhibit in Evidence Number 73, which is, as you will see, total assets of commercial banks in the City of Greeley and the Greeley area.

A. Yes.

[847] Q. Which we have defined in the footnote, and——

THE COURT: What number is that again, Mr. Schoepke?

MR. SCHOEPKE: Number 73, and, at the same time, Your Honor, with your leave I would like to show him 73 through 83.

THE COURT: All right.

MR. SCHOEPKE: They are similar tables except they have different indicia. One is total assets. Another is total deposits. Another is demand deposits, and so forth.

Q. I show you Plaintiff's Exhibits in Evidence Numbers 73 and 74, and ask you whether on the basis of the data in those exhibits whether or not you would consider the banking in the City of Greeley as concentrated?

A. Concentrated how? One bank?

Q. In terms of the percentage, the relative percentage of bank deposits in the leading banks?

A. Well, the three so-called downtown banks have most deposits.

Q. So, would you consider that concentrated or not concentrated?

A. No, I would just say they have the most deposits.

Q. Now, I will show you Plaintiff's Exhibit Number 75, and ask you whether this concerns IPC demand deposits and ask you whether or not on the basis of shares of deposits among [848] the banks in the City of Greeley and the Greeley area whether in your capacity as a banking regulator you would consider that distribution of banking in the Greeley market in terms of IPC demand deposits as being concentrated?

A. No, I would say the same three banks have the most demand deposits, the three downtown banks.

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[849] Q. Now, if you will forgive me, Mr. Thomas, I think the last one that I showed you was 76. Now, I will show you Plaintiff's Exhibits in Evidence 77, 78, 79, 80, 81, 82 and 83, and ask if you would just look at those and would you tell me whether in your opinion as a banking regulator you think that banking in Greeley, the City of Greeley and the Greeley area, is or is not concentrated?

A. Well, after looking at this, it is obvious that the three so-called downtown banks are doing the best business, deposits, loans and everything else. I don't think that's concentration, no, sir.

Q. And of these three, the First National Bank is the second largest, isn't it?

A. Yes, sir.

Q. Now, Mr. Thomas, what does the word "concentration" mean to you?

Mr. Metzger: Objection, Your Honor, this is calling [850] for speculation, and in effect in this case a legal conclusion from this witness, which is inappropriate for the witness and I think would add nothing to the prosecution of this case.

The Court: Overruled. You may answer. He wants to know what your conception of economic concentration is. I guess that's it.

A. A—predominantly influence on the market.

Q. In what way?

A. Controlling the market.

Q. Pardon?

A. I would say concentration would be being so heavily influential in controlling the market that you would be able to control it.

Q. Well, do you mean by concentration that in order to have a concentrated market you have to have a monopoly power?

A. That's my—that's the way I look at it.

Q. Is it your view of concentration that concentration cannot be divided among more than just one firm with a monopoly power?

A. Not with a monopolistic power, no. I would say, to me, concentration would be the one predominant factor in the market.

Q. Oh, by the way, you represent national banks, do [851] you not?

A. Oh, yes, that's all, not——

Q. You just recommend to the Comptroller of the Currency on whether or not you would charter a national bank?

A. That's right.

Q. Isn't that correct?

A. That's right.

Q. Now, a bank holding company like Bancorporation here does not necessarily have to organize or acquire national banks, does it?

A. No.

Q. Under——

A. They can be a commercial bank, I believe. I think they cannot acquire an industrial bank, but that I am not sure. Commercial bank.

Q. But they can acquire state banks as well as national banks?

A. Absolutely.

Q. They can also charter de novo on state banks, can they not?

A. Oh, yes.

Q. Now, are you just——

A. I'm just here in a capacity as a national bank supervisor.

Q. You are not here or are you qualified to speak for [852] the state banking authorities?

A. Oh, no, definitely. Yes, I am not, I am sorry, I am not, no.

Mr. Schoepke: We have no further questions, Your Honor.

REDIRECT EXAMINATION

By MR. METZGER:

Q. Mr. Thomas, is it usually the case that downtown banks control the bulk of the deposits in any community?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Bloom, the State Banking Commissioner, that he would grant a——

A. Here?

Q. ——a charter in downtown Greeley, if one were sought?

A. No, sir.

MR. METZGER: Neither did I. No further questions.

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[864] JOHN F. FALKENBERG

a witness called by and on behalf of defendants, having first [865] been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. WILLIAMSON:

THE COURT: Take the witness chair and state your name, address and occupation, please.

THE WITNESS: I am John F. Falkenberg. I live at 831 St. Paul Street, Denver. I am vice president in the business development department of the First National Bank of Denver.

MR. WILLIAMSON: Your Honor, I have to apologize—I seem to have misplaced his resume. I beg the Court's apologies.

THE COURT: That's all right. We can live without it. You can ask him a few questions, if you wish.

MR. WILLIAMSON: All right. I'll try and see if we can develop a foundation.

THE COURT: We will let him testify regardless.

Q. (By Mr. Williamson) Mr. Falkenberg, are you presently an officer of the First National Bancorporation, is that correct?

A. No, the First National Bank.

Q. I am sorry. The First National Bank of Denver?

A. Yes, the First National Bank of Denver.

Q. How long have you been an officer of the First [866] National Bank of Denver?

A. For about six years.

Q. And what was the first function you performed as an officer six years ago?

A. It was in the real estate loan department when I joined the bank, but about two and a half-years ago I transferred in the business development department.

Q. Did there come a time when you became aware that the Colorado National was offering a particular program on service charges on their individual bank accounts?

A. In the fall of 1969 Colorado National launched an extensive advertising program on their three-to-one service charge.

Q. Would you please explain three-to-one service charge for us?

A. Their advertising stated that if you maintained a minimum balance in your account of $300.00 you paid no service charge. If your minimum balance was two hundred to three hundred dollars, you paid a one dollar service; one hundred to two hundred dollars you paid a two dollar service charge; under one hundred dollars you paid a three dollar service charge.

Q. And at your particular level, below the top executive officers of the bank, what efforts did you take to examine the impact of this program?

[867] A. At that time our business development department had the sole responsibility for concern about the deposit growth both in the retail and wholesale side of the bank. Early in 1969 other banks in Denver had come up with a minimum service charge program but none with as low a balance as that and we felt that they were of no particular competition because we were offering our customers a better plan, on the analysis basis, than the Denver-U.S. was offering on theirs. But, when the program came out we began to notice—we felt some attrition of our depositors. We were losing customers and we took steps to remedy that.

We went into a study of alternate service charge programs, culminating in a report in November of evaluating three or four different ways we might go to meet that competition.

Q. I show you Plaintiff's Exhibit admitted in evidence

183 and ask you if this is that memorandum, and does it reflect the three options as a result of your study?

A. Yes, it does.

Q. Did you meet the competition of the Colorado National?

A. No, we felt that wasn't sufficient. We beat Colorado by offering a more attractive service charge program at that time.

[868] Q. Now, at the time of the recommendations, there were three, were there not?

A. The study concerned three alternatives. Our recommendation selected one of those as our recommendation or the recommendation of our group.

Q. But even the recommendation that you offered to higher management beat, did it not, did more than meet the Colorado National program, isn't that correct?

A. Correct. It offered a lower minimum service charge than the—a lower fixed service charge for balances under the minimum than Colorado National did.

Q. Now, this program I take it was presented to higher management, is that correct?

A. Yes.

Q. And what was that committee?

A. The committee would have been the meeting of the senior loan officers, consisting of generally the president, the chairman of the board is often at that meeting, senior vice-presidents.

Q. What action flowed from that meeting? Did they accept your recommendation?

A. They didn't accept the recommendation. They took the third alternative that we had considered, the one that cut the service charge even lower than the one we recommended.

Q. So, in other words, you not only beat the competition [869] of Colorado National but your loan committee, senior loan committee, decided to go even further, make it even more aggressive competition, isn't that correct?

A. Yes.

Q. Irrespective of your suggestion or caveat that it might start a price war?

A. Yes.

Q. But, nevertheless, your senior committee recommended taking an even further step irrespective of whatever dangers of price war there would be, is that correct?

A. Correct.

MR. WILLIAMSON: I have no further questions.

Excuse me, I do have one further question. May I take it out of time, Your Honor?

THE COURT: All right.

Q. Based upon your experience and in the Denver banking market, is it fair to say that the Denver banks do not follow parallel pricing policies?

A. That is, do we set our price parallel to somebody else?

Q. Yes.

A. No, we are struggling for some advantage over the other banks, so we are attempting always to be under what the competition is offering.

Q. This is a good illustration, is it not, of the [870] fact you don't follow parallel pricing?

A. Yes.

MR. WILLIAMSON: No further questions.

CROSS-EXAMINATION

By MR. BRENAN:

Q. Could you just state, Mr. Falkenberg, what was meant in Plaintiff's Exhibit 183 by the term "service charge war"?

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A. (continued) A service charge war would be a situation where our competition then cut the price further and we were forced to cut the price further. The gas war, [871] you know what that is.

Q. And that would be an undesirable development, is that correct?

A. Well, if you will look on the memo, you will see in the document of the plan that we did, we reduced our income $3,000 a month on ten percent of our accounts, or $30,000 a month times 12 months is a third of a million dollars a year that we undertook to save the public and reduce our earnings in order to beat the Colorado National. At a certain point there is some diminishing returns in that, but we were willing to take a third-of-a-million-dollar step in order to stay ahead of Colorado National.

Q. Right, but you didn't want to keep going too far, is that correct?

A. We didn't want to. I don't know that we wouldn't have.

Q. Now, Mr. Falkenberg, would you state what First National Bank of Denver's response would be if another bank in Denver began offering completely free checking?

• • • • •

[872] A. One of the downtown Denver banks, a very small one, now offers that, and we have stayed with our program since its inception in January, 1970. However, if one of the major banks, American, Colorado National, Denver-U.S., the ones that carry a big share of the market—I just can't predict what our reaction in that case would be.

Q. Does that indicate to you that—in other words, is it a proper conclusion from that testimony that the little bank doesn't have enough market power to, you know, make a sufficient dent in your business to cause a reaction?

A. Experience has demonstrated that.

MR. BRENAN: No further questions, Your Honor.

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[875] ROYCE CLARK,

a witness called by and on behalf of the defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. METZGER:

THE COURT: Give us your name, address and occupation.

THE WITNESS: Royce Clark, 440 South Queen Street, Lakewood. A vice president of First National Bank of Denver.

Q. (By Mr. Metzger) Mr. Clark, are you familiar with the First National Bank of Fort Collins?

A. Yes, sir.

Q. Is the First National Bank of Fort Collins a member of a holding company?

A. Yes, they are a member of the Western Bancorporation.

Q. Have you attempted to gain business from the First National Bank of Fort Collins despite that relationship?

A. Yes, sir.

Q. What was your first success if any with relation to that account?

THE COURT: You are now talking about the biggest holding company in the world?

MR. METZGER: We are, Your Honor.

[876] THE COURT: The very largest?

MR. METZGER: The very, very largest, and the largest in Colorado, too.

THE COURT: All right, good. I just wanted to be sure.

A. We have a correspondent account from them. We also have been successful in various loan participations, and we have their Master Charge relationship.

Q. Are there any other Western Bancorporation banks in the State of Colorado?

A. Two. American National here in Denver and Continental National in Englewood.

Q. Does the American National Bank offer a credit card?

A. Yes, sir.

Q. Which credit card?

A. Master Charge.

Q. And despite the fact that the American National and affiliates offer the same service, you do have that account, is that correct?

A. That's right, sir.

Q. And are you about to begin clearance of cash letters for the First National Bank of Fort Collins?

A. We were advised last week and started Friday receiving their cash letter, yes, sir.

MR. METZGER: No further questions.

[877] CROSS-EXAMINATION

By MR. MALASKY:

Q. Mr. Clark, is it?

A. Right.

Q. Mr. Clark, are you in the correspondent department of the First National Bank of Denver?

A. That's right, sir.

Q. And does the correspondent department of the First National Bank of Denver presently have substantial correspondent business from any other subsidiary of any holding company in Colorado?

A. Yes, sir.

Q. Would you expand on that?

A. From any other holding company?

Q. My question is, does the correspondent department of the First National Bank of Denver presently have substantial business of subsidiaries of any other Colorado bank holding companies which also has a Denver correspondent?

MR. METZGER: May I have my standing objection, Your Honor, to the characterization of the business of the First National Bank of Denver being the business of its correspondent department which has no business.

THE COURT: Yes, you may. Go ahead.

THE WITNESS: Would you back up and rephrase your question?

[878] MR. MALASKY: Would you read the question.

THE COURT: Do you do any substantial business from any holding company affiliated bank in your correspondent department of the First?

THE WITNESS: Any other than Western Bancorporation?

THE COURT: Yes.

THE WITNESS: Yes, sir.

THE COURT: I think that's what he asked you.

MR. MALASKY: I am asking with respect to the holding companies that have a Denver based bank which offers correspondent banking services.

Q. Isn't it a fact, Mr. Clark, that the First——

THE COURT: Did you get the answer to that last one?

THE WITNESS: As a Denver based holding company?

Q. A holding company which has a Denver subsidiary offering correspondent banking services, to be specific, Colorado National, Colorado C N B Bankshares, United Banks of Colorado, First National Bankshares, Inc.?

A. Yes, we do.

Q. Which ones?

A. First Colorado Bankshares.

Q. And you have business of affiliates of First Colorado Bankshares?

A. Yes.

[879] Q. Isn't it a fact that the Fort Collins situation is an exception rather than the rule?

A. I don't know that to be.

* * * * *

Q. Does the First National Bank of Denver actively solicit correspondent accounts of subsidiaries of United

Banks of Colorado, of Colorado C N B Bankshares,—well, those two?

A. I'd say we solicit accounts from everyone.

Q. Are you able to obtain or do you have substantial correspondent business from subsidiaries of United Banks of Colorado, Inc., Colorado C N B Bankshares, or any other affiliate or subsidiary of Western Bancorporation besides the [880] First National Bank of Fort Collins?

A. Yes, we do.

Q. Would you tell me who they are?

A. We have a relationship with Continental of Englewood.

Q. What is the extent of that relationship? What do you do for them?

A. I am not in that department. It's handled in a different department than I, so I think I'm really unqualified to say.

Q. Is Western Bancorporation permitted to acquire to your knowledge——

MR. METZGER: Objection. Counsel is asking a question to which, one, the witness is not qualified, and two, which is completely irrelevant to any testimony this witness has made.

THE COURT: I think we can all agree they are not eligible to require any further affiliate or subsidiary——

MR. METZGER: Not so long as this bank structure is a part of the Western Bancorporation.

It could be spun off, however.

THE COURT: Well, under present conditions at least isn't that true, Mr. Malasky?

MR. MALASKY: Yes, Your Honor, I believe that's correct.

MR. METZGER: My objection stands as to the relevancy [881] of this to the testimony of this witness. These are banks which are parts of holding companies which holding companies offer the same service as we do and which business we have successfully obtained. This is plaintiff's proposition, and I think he has failed on it.

Q. Mr. Clark, how long have you had a substantial or any relationship with the—— Is it the First National Bank of Fort Collins? Yes, the First National Bank of Fort Collins on your Master Charge relationship.

THE COURT: Did he say he had a Master Charge relationship?

MR. MALASKY: Yes.

Q. When did that come about?
A. When Master Charge was introduced by our bank.
Q. Which was——
A. Which I don't remember the date, but I think it was in the summer of 1969.
Q. And when did the American National Bank offer Master Charge? Did they offer it at that time?
A. At the same time.
Q. They began it at the same time?
A. Yes, sir.
Q. Or did they have it afterwards or before?
A. At the same time.
Q. Exact same date? The franchise was granted at the [882] same time?
A. We are all part of an association that all started at the same time.

MR. MALASKY: I have no further questions.
MR. METZGER: No further questions.
(Witness excused.)
MR. METZGER: The defendants now call Mr. Philip H. Hogue.

PHILIP H. HOGUE,

a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. METZGER:

THE COURT: State your name, address and occupation.
THE WITNESS: My name is Philip Hogue. I reside at 1250 South Drew Way, Lakewood, Colorado. I am a vice president of the First National Bancorporation.

Q. (By Mr. Metzger) Mr. Hogue, could you tell us something more of your professional background.
A. I have been with the First National Bank of Denver since 1958 and initially on a training program. Shortly after I began with the bank I entered the automation field for a period, approximately two years, and ran the data processing function of the bank. I spent a year heading up [883] the methods improvement program which was a work

measurement program of the bank. I have been in the correspondent banking department approximately three to four years. I managed the Master Charge program; credit program for something less than a year, and I joined the holding company in September or October—October, I believe, 1969.

Q. Mr. Hogue, were you with me for breakfast one day last week with a gentleman named Allen from Durango, Colorado?

A. Yes, sir.

Q. When I asked Mr. Allen whether or not, in the pursuit of truth in a courtroom, if he would not want to hear my facts and weigh them against the defendants' facts, could you tell us what his response was?

A. I don't know whether it's word for word. His response was "I'm not interested in your facts."

Q. Thank you.

Referring to the situation in Montbello, Mr. Hogue, were you intimately connected with the holding company's attempt to secure a banking facility there?

A. Yes, sir.

Q. Where is Montbello?

A. Montbello is north and east of Denver incorporated into the city limits of Denver.

Q. What first attracted your attention to the banking [884] potential of the Montbello area?

A. The projections on population as well as industrial expansion. Montbello is unique in that it has almost 5,000 employees in 50 different industrial installations there now and the projection is for approximately 10,000 employees and 40,000 permanent population.

Q. Is this new employees and new population?

A. New, since the inception of Montbello.

Q. Which was?

A. It was two years ago, that neighborhood.

[885] Q. How did you first intend to obtain a banking office in this area?

A. It was originally the intention of the bank or Bancorporation to form a de novo bank in Montbello.

Q. And did you change that intention?

A. I believe Mr. Thomas, Jack Thomas, that is, Regional Comptroller, was informally advised of this intention and subsequent to our moving on this course of action the Montbello State Bank was formulated.

Q. And what effect did that have on your plans?

A. We felt that the Montbello State Bank was a new bank in the Montbello area. It had what we thought was reasonable growth but it had not achieved a great deal of size, and we thought that on one hand you had the needs occasioned by the industry in Montbello not being served by a bank that was very small. On the other hand, you had a very small bank trying to rely on the population growth, and we felt that it would be best to attempt to purchase that bank in order to accomplish both the satisfaction of the needs of the industrial business without unduly damaging the existing bank.

Q. Why did you feel that the Montbello State Bank was not serving the needs of the area?

A. Well, the companies out there range from Samsonite with almost 4,000 employees and worldwide operation, to some [886] of certainly a great deal more modest size. The bank was in the neighborhood of two to two and a half million dollars in size. They were affiliated with the bank in Aurora, Aurora National, I believe, which was also a modest size, something less than, I believe, $20 million, and we felt that the needs of the industrial community were more than could be served by banks of that size.

Q. Was that bank advantageously located to serve the citizens of the Montbello industrial area?

A. No, it was on the south side of the interstate and the Montbello development itself on the north side of the interstate, I-70.

Q. You say you applied to acquire the Montbello State Bank?

A. Yes, sir.

Q. What happened?

A. We are denied by the Federal Reserve Board on a vote of four to three, I believe.

Q. On what grounds?

A. The Federal Reserve Board suggested that it would be desirable to have two competitors there rather than one, and as I recall the wording, they said that the area, as are most areas in Denver, I believe the wording was, is underbanked and could stand another competitor.

Q. And what did you do then, Mr. Hogue?

[887] A. We attempted to be another competitor. We formed a group to put together a charter application for a national bank.

Q. And what happened after this application was filed?

A. The application was protested by the existing bank in Montbello, together with two other banks in Aurora, and there was the—the required hearing was held. Following the hearing, it was submitted to the Comptroller and ultimately denied.

Q. So that you are not doing business in Montbello today?

A. No, sir.

Q. I think you indicated the Montbello area would have something in the area of 40,000 population within a short span of time.

A. I believe that projection is for 1975. Right now in the area defined as the trade area in that application there were something approaching 20,000 people, I believe, 16 to 17 thousand.

Q. So despite this unique growth from a modest or nonexistent beginning, your attempts to enter the market de novo failed, is that correct?

A. Yes.

Q. Mr. Hogue, turning your attention to the area of correspondent banking, will you tell us how many employees [888] there are in the First National Bancorporation system, including the subsidiaries?

A. The consolidated report for March 31 showed 1,452.

Q. And how many of these employees are employed in the commercial bank department?

A. In the commercial bank department?

Q. I am sorry, in the correspondent bank department.

A. Fifteen.

Q. Do these 15 employees spend all of their time on correspondent banking activities?

A. No, the members of that department have significant other duties.

Q. Mr. Hogue, I show you Defendants' Exhibit Number 13, a ranking of bank balances in correspondent banks in the United States as of September 30, 1970, and I ask you what were the total deposits of correspondent banks at that date?

A. 27 billion 217 million.

Q. And what share did the First National Bank of Denver have in those deposits?

A. I believe we calculated that percentage to be 0.19 percent.

Q. And if there were a foreclosure of the business of the First National Bank of Greeley, what proportion of those balances would be foreclosed?

A. 4/1000 of one percent.

[889] Q. Now, could you tell us what services the correspondent bank department of your bank itself offers to other banks?

A. The correspondent bank department in and of itself offers no services to correspondent banks.

Q. Whose services does it sell?

A. The First National Bank of Denver's.

Q. And to whom does the First National Bank of Denver sell its services?

A. The services generally are applicable to almost all of its customers. There are exceptions such as the Federal Fund transactions, however, that are—because of the nature of the transaction, unique to banking.

Q. I would like to discuss with you, Mr. Hogue, the principal services of a bank which are sold to other banks, as well as to other people, and let's see to whom they are sold and what the appropriate product market and section of the country is with relation to the principal product.

Is lending activity——

A. A commercial bank is in the business of making loans and making those loans to customers of all kinds. In the nature of lending, the term "overline" has been used in the course of the trial, which in banking language indicates a loan or borrower's request in excess of the lending limit of the bank that it approaches and that bank seeks out another bank in order to assist the borrower. It acts as an [890] intermediary or conduit between the bank with the funds, the source of funds, and borrower's requests.

Q. And the First National Bank of Denver does make this kind of loan?

A. It does.

Q. With whom does it compete for this service?

A. It competes with other banks, principally other banks that would travel our territory with some regularity. These banks would be located in Chicago, Kansas City, Omaha, both coasts, New York and California, but it is not necessarily limited of terms of the—to the major banks. It is my belief that other banks in Colorado such as the First National Bank of Colorado Springs or the First National Bank of Pueblo have engaged in assisting banks with overlines.

Q. What about check clearing?

A. Check clearing is a service that a bank performs again for every one of its customers. Checks deposited by an individual that must be cleared are cleared by a bank. Certainly, corporate checks are cleared by a bank, as well as checks sent to it by another bank.

Q. All kinds of customers send you checks for clearance, is that correct?

A. Yes, sir, the primary objective in the check clearing is to present that check for payment by the drawee bank as soon as possible to obtain your funds and to the extent that [891] this haste is imperative or prudent, it is perhaps a little more confined geographically to transportation schedules and those things that facilitate the clearing of a check.

Q. Where would I clear my checks, if I were a bank in, say, Colorado Springs?

A. If you were a very small bank in Colorado Springs, you could send them to a larger Colorado Springs bank. If you were a member bank of the Federal Reserve System, you could send them to the Denver branch of the Federal Reserve System. You could send them to a Denver bank directly. If you were a bank in Colorado Springs with some activity in the transit area, in other words, some volume of checks drawn on a particular area such as New York or Kansas City or another area is Salt Lake, perhaps you would send that particular segment of checks direct to a source there.

Q. What is the largest check-clearing service in the United States?

A. I think the network that is put together with the Federal Reserve System for the banks is certainly the largest. The textbook used by bankers in defining these systems and services put out by the American Institute of Banking contains a quote: "The twelve Federal Reserve Banks and their 24 branches, the member banks and the participating nonmember banks form a network which provides the most extensive check collection in the world. The Federal Reserve par collection [892] system is used by thousands of banks daily. It provides a comprehensive, economical and convenient way of collecting checks."

Q. In sum, then, Mr. Hogue, must I clear my checks through a Denver bank?

A. No, sir.

Q. May I clear my checks through banks elsewhere in the state?

A. Certainly may.

Q. May I clear my checks through the Federal Reserve?

A. Yes, sir.

[893] Q. May I at somewhat greater inconvenience clear my check through other Federal Reserve cities in the district?

A. Yes, sir, I think that as a matter of consideration and some amount of inconvenience you could probably send the check almost anywhere for clearance.

Q. And how am I charged for check clearing if the service is performed for me by a bank, Mr. Hogue?

A. If the service is performed by the First National Bank of Denver, you would be charged on an analysis basis.

Q. Just I will do all your checks no matter how many there are for "X" dollars?

A. No, we equate the—we have specific charges, first let me say, with connection to the clearance of checks and those are then applied in most cases to the balance to determine the profitability or loss of the transaction.

Q. Now, let's address ourselves to federal funds, Mr. Hogue. What are federal funds?

A. Federal funds are—well, let me first say member banks of the Federal Reserve System are required to keep on deposit at their bank or branch, Federal Reserve bank or branch, certain reserves. These reserves are referred to as federal funds. In that these reserves may build over a period of time, certain banks may have excess funds at a time when other banks are short of funds, and it is—the federal funds transactions market is bringing I guess buyer and seller together.

[894] Q. With whom do you compete for the purchase and sale of federal funds?

A. We certainly compete with the banks in Denver, but the federal funds transactions are a great deal broader than that. It is certainly a regional or national market in the purchase and sale of federal funds.

Q. How do you go about buying or selling federal funds?

A. Various—we have an area in the bank, cash management area in the bank, who acquaint themselves daily with what rate is being paid for federal funds, and it is a matter of accumulating funds that you have for sale and contacting a buyer, arranging for a price and selling funds to the buyers.

Q. Suppose I am a banker in Bangor, Maine, and I want

to buy federal funds from you. Would that be an expensive proposition? How would I do it?

A. Well, I don't know that you would want to—necessarily want to buy particularly from me. If you had a shortage and wanted to buy federal funds, you would probably in that part of the country, not knowing it too well, but probably contact New York and arrange to purchase the funds.

Q. Could I do it with you?

A. Certainly.

Q. How?

A. Pick up the phone. We have a number of banks in Colorado—there is some advantage by going to the West Coast [895] because of gaining an hour at the end of the day. It gives you one more hour to know what your cash position is before commiting yourself to the sale or purchase of funds. We find banks in Colorado going to California to accomplish this because of the period of time.

Q. Do they go to New York?

A. Yes.

Q. Chicago?

A. Yes, sir.

Q. Do you go to all these parts of the country?

A. Yes, sir.

Q. Do you get business from these parts of the country?

A. Federal funds?

Q. Yes, sir.

A. Yes, sir.

Q. Do you have what is known as a Watts line on your telephone?

A. Yes, sir.

Q. Would you tell us what that is?

A. Wide area transmission is what it stands for I think. We have both a local and—several, both national and local. It permits you to call for a specified fee rather than a toll charge per call.

Q. Let's refer to your bond division, Mr. Hogue. Do you buy and sell bonds?

[896] A. Yes, sir.

Q. How do you charge for that service?

A. The bond division operates as a separate entity and it hopefully buys bonds at a certain price and sells them for more. It is the breakage between the purchase cost and the sale cost.

Q. With whom do you compete in offering this service?

A. We compete with other banks in terms of a national basis. The question was asked of the individuals that are in charge of our bond division, and if I may, I have a list of the entities that our bond people feel are competitors in this area, our immediate competition, and this includes the following firms: Boettcher and Company, Kirchner, Moore and Company, Hanifen, Imhoff and Samford, Coughlin and Company, Stern Brothers and Company, George K. Baum and Company, and Burkhardt-Gerwin and Company. In addition, bond houses, all over the United States make daily phone calls to Colorado, since geographical location has little meaning with the availability of Watts lines.

Q. Do you compete with banks from other parts of the United States in this business as well?

A. Yes, sir.

Q. And I believe you indicated that your purchase and sale is paid for how?

A. The bond division deals with individuals, with [897] corporations, with banks, and its profit comes from prudent buying of bonds and better sales.

Q. You buy low and sell high?

A. Yes, sir.

Q. What about the credit card business, Mr. Hogue?

A. The credit card business that our bank is engaged in is the Master Charge card.

Q. With whom do you compete?

A. Well, we compete, as an example, for the issuance of cards with any retail card, any charge card issued by gasoline companies, department stores, other bank programs such as Bankamericard, American Express. In addition, we compete with other banks for the offering of a bank card.

Q. And how are these items charged?

A. The credit card program came to being here in 1969. It was necessary at that time to establish a charge or a fee structure for the offering of the credit card, and it is an entirely separate fee structure. This is absolutely no relationship to bank balances.

Q. Addressing yourself to the offering of pension and profitsharing plans, where do you offer—what is this service, first, Mr. Hogue?

A. This is a service offered through our trust division. It is offered to any variety of companies, unions, banks. It is offered nationally. There is a concerted effort in our

[898] trust department to provide service from the First National Bank of Denver nationally.

Q. With whom do you compete?

A. Again, this is an area where other banks are competitive, and certainly, insurance companies, investment brokers, and generally national in scope.

Q. Do you compete nationally?

A. Yes, sir.

Q. You have customers on the East Coast?

A. Yes, sir.

Q. On the West Coast?

A. East Coast, I am sure. I would suppose on the West Coast, yes, sir.

Q. Tell me, Mr. Hogue, are these the principal services of the bank which are sold?

A. These, in addition to the data processing function.

Q. All right, would you tell us about data processing, sir.

A. The First National Bank of Denver has a capacity, a data processing capacity, and it offers a service to individual corporations and banks again of a range of data processing services to all its customers.

Q. With whom do you compete in the offering of this service?

A. We certainly compete with other banks. I have a list [899] of 15, in addition to the First National Bank of Denver, 15 alternative sources of data processing.

Q. Are these solely banks?

A. No, sir, there are a number of banks, a number of service bureaus also listed as being alternatives for data processing. There is one in Colorado Springs, Kaman Nuclear, which has a data processing capacity for banks, that's primary function or other function is associated with the company.

Q. Does it actually service banks and——

A. Yes, sir, it does.

Q. And how do you pay for this service, Mr. Hogue?

A. With a specific specified fee for services rendered.

Q. Mr. Hogue, are all of these banks and services companies other than Kaman in Denver?

A. No, sir, the United Bank of Denver, Colorado National and American, as well as Central have facilities here. Central also has a data processing office and operation in

Grand Junction. First National Bank of Colorado Springs has its capacity, as does First National Bank of Fort Collins and First National Bank of Boulder, Greeley National Bank. Then there are several, First National Bank of Westland, which is in Lakewood. In Denver Peoples Bank of Aurora. Jefferson County Bank of Lakewood. Kaman Nuclear in Colorado Springs.

Q. Mr. Hogue, are these products sold in a package?

A. No, sir.

[900] Q. Is there any one of these services which if you buy you must buy one or more of them?

A. No, sir.

Q. Let me put that differently. Are there any of these services which if you purchased from one supplier it would be substantially inconvenient for you to purchase any of the others from another or other suppliers?

A. No, there are a lot of combinations to these things. I think we find that banks tend to go where they find a quality product at an attractive price. Specifically in the data processing area, we have had a number of banks that have gone out on their own to begin their own data processing centers or have switched, have left us and gone to another source.

Q. Now, when you sold the services of the bank, what did you try to sell, each one separately, or systems as you could, or what?

[901] A. It is difficult to go into a bank and say, "I want to talk to you about 30 services." We try to acquaint ourselves with the banks, with particular needs that might have been in existence at that particular time in a bank. Naturally, we would like to have as much of these banks' business as possible, but I don't think that you are always in a position to have exactly what every one of your customers wants, nor more than a department store is capable of selling every product it has to a particular person.

Q. How does one pay for the services one obtains on these various groups we have been talking about, Mr. Hogue? I think you said the data processing is paid for on a separate fee schedule.

A. It is.

Q. And your bond purchases and sales are paid for on the difference between your buying and selling price?

A. Yes, sir.

Q. Credit cards have a separate time schedule?

A. Fee schedule, yes.

Q. Fee schedule. Pension and profit sharing plans are of a separate fee schedule?

A. Yes, sir.

Q. I ask you to look at Plaintiff's Exhibit No. 192, Mr. Hogue. Do you have a copy of that before, you?

A. No, sir.

[902] Q. Could you tell us what this document is, Mr. Hogue?

A. This is an account analysis form.

Q. For whom do you—with whom do you use this form?

A. This form would be used for the analysis of large accounts.

Q. Bank accounts?

A. Yes, bank accounts, even large individual accounts, certainly corporate accounts.

Q. So this form has general applicability among large accounts?

A. Yes, sir, this particular form is one that requires some manual entries and the individual accounts of the bank are—the analysis is on an automated basis, so this has applicability to the larger accounts.

Q. I see, but all accounts receive an account analysis, is that correct?

A. In one form or another.

Q. Now, could you tell us what these items mean? I think we start with average balance. What is that?

A. The average balance is that balance which is reflected on your books at any particular time. Now, I might mention this form is used, is prepared, monthly, and so the term "average balance" would be the aggregate of the daily balances averaged as they appeared on your books.

Q. And it says, "less uncollected funds." What does [903] that mean?

A. This is a term we have talked about during the trial at several points. Uncollected funds are those checks that have been deposited with you and in the average balance would have been credited to the customer's account but would not have been collected at that time by, in this case, the First National Bank of Denver. They are essentially transit items in the process of collection.

Q. So you haven't been paid for them yet.

A. The bank has not received payment at the time it is credited to the account.

Q. And the next item, net balance, is the difference between the two?

A. Yes, it is just the subtraction, average balance less uncollected funds.

Q. What does the next item mean, less legal reserve of 17½ percent?

A. This is the reserve on deposit at the Federal Reserve Bank by virtue of our being a national bank and a member of that system. It is a required reserve.

Q. That is a portion of the net balance figure?

A. Yes, sir.

Q. Is that what the Federal Reserve Board requires?

A. Yes, sir.

Q. And the next item, net funds available for investment.

[904] A. That's net balance less your reserves. This is the amount that you would actually have in hand to invest.

Q. And the next item, earnings credit——

THE COURT: You don't always give credit on those transit items, do you?

THE WITNESS: No. Well, yes, sir, in terms of analyzing the account, if a deposit is made containing a number of transit items we would credit the account. There are procedures within the bank.

THE COURT: It is a conditional credit?

THE WITNESS: It is a conditional credit.

THE COURT: In other words, you don't permit checks to go against that?

THE WITNESS: We might—we certainly would in some cases, if an individual were to bring in a check and it were drawn on Colorado Springs or some other place that had a one-day float. If they were large items or if it were a brand new account and it was opened with a check in New York, we would certainly wait until that check cleared before we would permit checks to be drawn, or again if they were particularly large items you could lock the account out for a certain amount above what happened to be collected funds at that time.

Q. Mr. Hogue, you then have your earnings credit, which is what you can earn on those net funds available for [905] investment?

A. Yes, this is the computation that says this is what we would have in the way of earnings at 5 percent with

which to offset the costs, the maintenance cost of that account.

Q. What are the specific items below labeled "account expense"? What purpose do they serve on this analysis?

A. Well, in the process of any large account you might have a number, a combination of these particular items. As an example, if this analysis pertained to a bank, the third item listed, items deposited, or the fourth item, items deposited dollar amount and coded, would certainly be high, higher than an individual account. These would be items sent to you by a bank for clearing. We have specific charges for each of these that we do our best to keep track of in terms of the account usage, and at the end of the month when we are analyzing the account we translate these individual amounts into a collective amount which represents the cost of maintaining that account.

Q. Suppose you come up with a minus on this, Mr. Hogue? If the man retains a good balance with you, do you waive the difference?

A. We analyze these accounts for—I say, on a month-to-month basis. We will probably look at it over, say, a three-month period, a quarterly period. If at the end of a quarter, this was—the loss was not an isolated instance and he had run consecutive losses, we would bill the customer.

[906] Q. Suppose I came up with a $5 loss, would you bill me?

A. Well, I think this—as a practical matter, we might waive a $5 loss because it would take more to keep track of the billing on that than the loss.

Q. Suppose I came up with a net $500 loss.

A. If you're talking about a loss like that over a three months' period, you would certainly be billed.

Q. Would you expect payment?

A. Yes, sir.

Q. Now do I have to pay you this way via balances?

A. Well, I think it's fair to say that it's got to be one way or the other. Certainly if the balances are sufficient to cover the maintenance of the account, that's one thing. If the balances repeatedly are insufficient and as I mentioned over a quarterly period, there is an analysis of the account, you would certainly be advised of a loss.

Q. Would I be expected to pay?

A. Yes.

Q. Suppose I just continued to pay you?

A. Well, I think we would probably process on that basis.

Q. Are there accounts which do pay service charges rather than via the balance method?

A. Yes.

Q. Any substantial accounts?

[907] A. Yes, sir.

Q. So you are in the business of making money on these services, is that correct, Mr. Hogue?

A. Yes, sir.

Q. And if I want to buy one or two or ten of those services, if I am willing to pay for it will you sell them to me?

A. Yes, sir.

Q. Mr. Hogue, I show you Defendant's Exhibit No. 65 and ask if you are familiar with this document.

A. Yes, sir.

Q. What is that document, Mr. Hogue?

A. This is a profitability analysis of the First National Bank of Greeley's correspondent account with the First National Bank of Denver for the calendar year 1970.

Q. What does it show?

A. It shows several months of profit as well as several months of loss. It shows a total profit, total before-tax profit of $5,042.33.

Q. This account, I believe, Mr. Hogue, carried an average balance in excess of a million dollars through this period?

A. I'm not familiar with the balance through the entire period. I know that the last time that I looked at it it was approximately a million two hundred thousand.

[908] Q. How can we come down to a $5,000 income on a million two account?

A. Well, this is again a function of several things. The number of items deposited in that there is a specific charge assessed for number of items deposited. A large float factor. A number of different items used below the line in the analysis charge for that account would produce the loss.

Q. A large float account—to your knowledge does the First National of Greeley maintain a large float account with you?

A. I believe the analysis in April indicated that of ap-

proximately $1,140,000, I believe there was float in excess of $800,000. This is the average for the month.

Q. That means that when you start with average balances of a million one, you have to subtract your float in order to start getting at what the account is worth to you, is that correct?

A. Yes, sir.

Q. Are average balances then a valid test of the amount of service offered by a correspondent and the profitability of that service to the correspondent?

A. No, sir.

Q. Why not?

A. Well, we have just seen this in terms of profitability, the fact that we would report balances, and to use round [909] numbers, say, $50 million, to the extent that it contained a First National Bank of Greeley account of a million dollars, with a float of $800,000, it would not be portrayed in showing $50 million in balances. You've got an account that has for several months run at a loss. The balances sustain the amount of work that you do, and to that extent certainly there is profitability of having a million dollars.

Q. Let's take two accounts, Mr. Hogue, both of which come from banks of the same size, and taking the same services from you. One account maintained $2 million in correspondent balances and had a $2½ million float, and a second bank maintained a $1 million balance and had a $100,000 float. Which would be the more profitable account.

A. Obviously the account that is running the float in excess of the average balances is going to be a loss account. An account with a million dollars in average balance and a hundred thousand dollar float is subject to the usage of stop payments and miscellaneous charges. Certainly a very profitable account.

Q. And then as a means of assessing activity and profitability, how would you analyze the average balance?

A. The average balance does not reflect activity or profitability. In other words, I could not look at a bank's books and see a $1 million account for a bank and suggest that that was an active account or a profitable account.

[910] Q. Turning to the Defendant's Exhibit No. 65, Mr. Hogue, what percentage of the income of the First National Bank of Denver is associated with this account?

A. This account again had a profit of $5,042.33 before

taxes, which would have come down to something less than $3,000 after taxes, or, .05 of 1 percent I guess—I guess that's 5/100ths of 1 percent.

Q. Of the income of the First National Bank?

A. Of the income of the First National Bank of Denver.

Q. I show you Defendant's Exhibit No. 64, Mr. Hogue, and ask you whether or not there was any attempt made to determine what the correspondent balances were of banks which are customers or could be customers of your bank.

A. Yes, sir. This is a difficult thing to determine. The table marked Defendant's Exhibit 64 reflects balances of banks in this area, Colorado, Kansas, Nebraska, New Mexico and Wyoming in total. It is true that the table is inaccurate to the extent that banks in those areas would have deposits outside of the same area. But again, the Federal Reserve Bank of Kansas City—the source—listed these states. On the other side we travel—we, being the First National Bank of Denver, to Montana, parts of Idaho, parts of Utah, parts of Texas. So I don't know that you could say one offsets the other. But, there are some reasons to equate the value of the table in that respect. It's short on one side and over [911] on another.

Q. You spoke of where you travel, Mr. Hogue. Where does the First National Bank of Denver seek its correspondent business?

A. The First National Bank of Denver travels regularly to Montana, Wyoming, Colorado, Nebraska, Kansas, parts of Utah, and Idaho, as I mentioned, New Mexico, and very—a very little in Arizona, and some travel in Texas.

Q. What portion of your correspondent business comes from these states outside of Colorado, Mr. Hogue?

A. Approximately 35 to 40 percent of the balances are generated outside of Colorado. In terms of numbers of accounts, we have approximately 120—122 accounts within Colorado, which is less than half the total number of accounts—correspondent accounts we have.

Q. And then where do you believe that you service other banks from your bank?

A. Certainly in the area that we spend our time traveling in and seeking business.

MR. METZGER: Thank you very much. No further questions.

CROSS EXAMINATION

By MR. MALASKY:

Q. Mr. Hogue, are you telling us that correspondent business isn't a profitable one?

[912] A. No, I'm not.

Q. And isn't the usual form of payment for correspondent services the maintenance of balances?

A. The term of reference is too broad, when you say correspondent services. The First National Bank of Denver, the maintenance of balances is used to defray the cost of processing checks, but it does not enter into data processing sales, bonds, the pension profit sharing.

Q. Do you share in loans that your correspondents can't handle because their legal lending limits are too small?

A. We do.

Q. And these are generally known as overlines?

A. They are.

Q. And isn't it a fact that when you take a share of an overline, that you are earning whatever the rate of interest is on your share of it? That's part of the profits which you are also getting?

A. There is a rate of interest attached to that portion that we fund, yes.

Q. Now, do your correspondents ever refer customers to you?

A. Yes, we consider banks in Cleveland that keep money on deposit with us, and of course, the Chase Manhattan Bank.

Q. The Chase Manhattan?

A. The Chase Manhattan maintains deposits with us [913] geographically which refer customers to others or as well as any other bank.

Q. And you would, I assume, provide certain services to those customers?

A. If our bank is chosen.

Q. And if it is chosen you would earn some money from the referrals that you get, correct?

A. Well, I can't say that categorically. We may have been referred a bad account.

Q. You would hope overall you would be making money on the referrals you get?

A. I would hope.

Q. And you do earn money from the services that you charge cash for, is that correct?

A. Yes, sir.

Q. Now, Mr. Hogue, is there a name of the group or division under which the 15 people who take part in correspondent activities in your bank deal in?

A. The 15 people that you mentioned specifically are in an area called the "correspondent banking department."

Q. And this is a separate department with the bank or the bancorporation? Or is it the bank or the bancorporation?

A. It is not the bancorporation. It's the First National Bank of Denver.

Q. It's a separate department within the bank?

[914] A. Yes.

Q. Is there a vice president in charge of the correspondent department?

A. There is.

Q. What is his name?

A. Carrol Stubbs.

Q. Now, when you go out and your people go out and solicit correspondent accounts, do you try to sell all these services? Or do you say to the bank, "We will only sell you these" or "these"?

A. Certainly we would like to have all the business of any of our customers, banks, corporate customers that we can.

Q. Now, Mr. Hogue, isn't it a fact that there is no other place other than a commercial bank or a correspondent bank where other commercial banks can get all of the services to which you referred at one place, at one time?

A. I don't know. I'm not qualified to answer that question.

Q. Do you know of any other place that a commercial bank can get all of the services to which you referred at one time?

Mr. Metzger: The question has been answered, may it please the Court.

Q. At one place and one time?

[915] The Court: He said he didn't know.

Q. You don't know?

A. I don't know of any.

Q. Now, when you solicit your customers in Colorado, is one of the selling points that you tried to make, that

you have knowledge of Colorado affairs, that you're a Colorado bank, that you can give——

A. I would not in going out to make contact imply that knowledge of Colorado affairs on my part included legal matters, the knowledge of legal matters in Colorado, as an example. Colorado affairs generally, the general industry——

Q. That's right.

A. Would we be aware as an example that a plant was located in Colorado? I think we could.

Q. Isn't it a fact that you as a Colorado bank emphasize in your solicitations the fact to other Colorado banks that you are a Colorado bank? That you have knowledge of the economy of Colorado, of the trade of Colorado, vis-a-vis——

A. Our banks attempt to do this with a number of customers. We put on an economic forum and I believe the last invitation included 500 industry leaders that we were trying to acquaint with what happens in Colorado.

Q. And isn't it a fact that when banks from New York and San Francisco solicit here that one of the big selling points that you have in Colorado is the fact that you are a [916] Colorado bank and you are best able to serve the needs of your Colorado customers?

A. I personally have not employed that method.

Q. Does your bank act as a depository for—as a depository for collateral which is used by banks in Colorado to secure municipal or state deposits?

A. It does.

Q. Do you perform that service for banks outside the State of Colorado?

A. Not to my knowledge.

Q. Now you mentioned that you——

A. The escrow? Is that what you're talking about?

Q. Yes. That's what I'm referring to.

Now, you mentioned that you solicited in Idaho. How many accounts do you have in Idaho?

A. I believe two or three. I mentioned we travel just a portion.

Q. Do you know what the total balances that the two or three accounts from Idaho represent?

A. I do not.

Q. You said—you mentioned that you solicit in Montana. How many customers do you have in Montana?

A. We were successful in the Master Charge in Montana and I believe we have on the neighborhood of 10 or 15 accounts.

Q. And do you know how much they represent in terms of [917] dollars?

A. I know that there are several large accounts. Collectively, I do not know.

Q. And you mentioned that you solicit in North Dakota. Do you know how many accounts you have in North Dakota?

A. Again, on the order of 20.

Q. I show you, Mr. Hogue, Plaintiff's Exhibit in evidence 26, which is the answer——

MR. MALASKY: This is the wrong one. I'm sorry. That's the wrong exhibit. Let me get another one.

Sorry, Your Honor.

Exhibit 25.

Q. I show you Plaintiff's Exhibit in evidence No. 25, Mr. Hogue. It says—refers specifically to the answer which the First National Bancorporation gave with respect to interrogatory 22-B, which asks to state the name and address of each commercial bank which maintained correspondent account with any bancorporation subsidiary as of December 31, 1969.

Are you familiar with this response?

A. Generally, yes.

Q. Would you accept my account that you had 12 correspondents from the state of Montana as of that date?

A. That's what the form says.

[918] Are you aware——

MR. METZGER: Objection, Your Honor, I will agree that the document states whatever it states.

Q. Are you aware of the fact that the total correspondent balances from the 12 banks in the State of Montana were approximately one-half that which were represented by the First National Bank of Greeley and the First National Bank of Denver?

A. On this particular form, I was not aware of that.

Q. Now, Mr. Hogue, I would like to show you Defendants' Exhibit No. 16. Are you familiar with this exhibit, Mr. Hogue, generally? Would you state what the title is?

A. The title reads, "Correspondent Bank Relationships of Colorado Banks."

Q. Do you know how many banks there are in the State of Colorado, Mr. Hogue?

A. Approximately 225.

Q. 227, would you accept that?

A. Fine.

Q. Do you know how many of those 227 banks have a correspondent relationship in Colorado?

A. I believe that you indicated 224.

Q. That was Denver. Would you agree with me that they all have a correspondent relationship in Colorado?

A. I don't know that that's the case. I would guess [919] that it is the case, yes.

Q. Do you know how many of those Colorado banks have correspondent relationships with banks in the State of Kansas?

A. No, I don't.

Q. Do you know how many have correspondent relation —would you believe me if I said that based upon this exhibit, it is nine?

THE COURT: Do you have any idea?

THE WITNESS: No, sir, I don't.

THE COURT: Well, then I don't know that it is of any value.

MR. MALASKY: May I go through——

THE COURT: To have him testify and ask him if it is true. Undoubtedly he believes you are truthful man.

Q. Are you aware of 227 Colorado banks only 36 have correspondent relationships in the State of Nebraska?

MR. METZGER: Your Honor, may I suggest counsel has switched in midstream. I don't know whether he is aware of it or not, but he has switched.

THE COURT: Sustained.

MR. MALASKY: All right, I will go back the other way.

THE COURT: Good.

Q. Mr. Hogue, do you know how many banks from the State of Kansas have correspondents in Denver?

[920] THE COURT: Do you know?

A. I have a form here that is selected from Polk's Director, 1971 Edition, of Kansas banks with the list of the town and the name of the bank and Denver correspondent. I have not tabulated this total.

MR. METZGER: That is a defense exhibit in this case, Your Honor. Whatever it says, it says.

THE COURT: Has it been received?

MR. METZGER: Pardon, Your Honor?

THE COURT: Has it been received?

MR. METZGER: Yes, Your Honor.

MR. MALASKY: Yes, that's correct.

Q. Do you know how many banks there are in the State of Kansas?

A. No, I don't.

Q. Do you know how many banks there are in the State of Nebraska?

A. No, I don't.

Q. Do you know how many there are in the State of New Mexico?

THE COURT: Is this designed to undermine him as a——

MR. MALASKY: No, Your Honor, defendants have introduced an exhibit purporting to show the number of correspondent relationships of banks and I believe it is five states, Kansas, Nebraska, New Mexico, Utah and Wyoming, with [921] Denver——

THE COURT: I think we have ascertained that he hasn't studied it.

MR. MALASKY: Well, this was the other side of the coin. I thought perhaps the witness might have some idea how many banks there are in the State of Kansas, and from that we could deduce how many there were with a correspondent in Denver, but if you have no knowledge of that I won't pursue this.

THE WITNESS: I do not.

MR. MALASKY: Fine, I won't pursue that line any further.

Q. Now, do you know what the total amount of deposits in the First National Bank of Denver from interbank demand deposits as of December 31, 1969 were?

A. I think that was—if that date is proper, that was part of Interrogatory 22. I believe there were 67 million.

Q. That's correct. Do you know what amount of the 67 million were from banks in the State of Colorado?

A. I don't know as of that date, no.

Q. Do you know what amount were from Wyoming, New Mexico, Nebraska, Kansas or Utah as of that date?

A. Not of that date, no.

Q. You mentioned the First National Bank of Pueblo and First National Bank of Colorado Springs?

[922] A. Yes.

Q. Do you have any idea what the total interbank or correspondent balances which those two banks have is?

A. No, I don't. I know that First National Bank of Pueblo I think by tabulations we made had 39 accounts down in the southern part of Colorado from Colorado banks.

Q. It is a fact, isn't it, that the overwhelming majority of the accounts in the First National Bank of Pueblo are from the southern part of the State of Colorado?

A. I would guess that's true.

Q. It is true that, also, is it not, the accounts at the Exchange National Bank of Colorado Springs or First National Bank of Colorado Springs are from their immediate, in quotes, area?

A. I don't know what the composition of either of those banks' correspondent account relationships are.

* * * * *

[924]

REDIRECT EXAMINATION

By MR. METZGER:

Q. Mr. Hogue, you spoke of depositors, that your bank operates as a depository for collateral. Is there any other way I could deposit funds in escrow accounts in this state?

A. You could deposit them with other banks or certainly with the Federal Reserve Bank of Denver.

Q. Does the Federal Reserve Bank perform this service for banks in Colorado?

A. Yes, it does.

Q. Second question, it was suggested that the Montana accounts by account balances constituted about one-half of the First National Bank of Greeley accounts as of December 31, 1969. Does that tell you, Mr. Hogue, the amount of activity in those Montana accounts vis-a-vis First National Bank of Greeley?

A. It does not.

Q. Does it tell you the profitability of those accounts vis-a-vis the First National Bank of Greeley?

A. Tells me only that one number is bigger than another.

MR. METZGER: Thank you, that's all.

[927] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

FIRST NATIONAL BANCORPORATION and FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

PROCEEDINGS BEFORE THE HONORABLE WILLIAM E. DOYLE, Judge, presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Tuesday, May 11, 1971.

APPEARANCES:

(As heretofore noted.)

* * * * *

[929] NORMAN M. POSTLES,

a witness called by and on behalf of the defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. SCHWARZ:

THE COURT: State your name, address and occupation, please.

THE WITNESS: Norman M. Postles, 2936 Nevermind Lane ——

THE COURT: What lane?

THE WITNESS: Nevermind Lane, Colorado Springs, Colorado. I am Vice-President and Chairman of the Board of the Northern National Bank of Colorado Springs.

Q. (By Mr. Schwarz) Mr. Postles, where does your bank clear its checks?

A. At the Colorado Springs National Bank and at the Federal Reserve Bank at Denver.

Q. Do you find the Federal Reserve Bank in Denver an acceptable substitute for clearing checks as opposed to Denver banks?

A. I do.

Q. Where does your bank place its overline loans?

A. At the Colorado Springs National Bank.

Q. Where does your bank do its bond trading?

A. Through several brokers and the First National Bank [930] of Denver.

Q. Where are these brokers located?

A. Some of them are located in Denver and some of them are located outside of the State of Colorado.

Q. Are these brokers non-bankers?

A. Yes.

Q. Where does your bank have its computer work done?

A. Kaman Nuclear, Colorado Springs, Colorado.

Q. Is this a bank?

A. No.

Q. Where does your bank have its escrow account for state deposits?

A. Federal Reserve Bank at Denver.

Q. Where does your bank do its safekeeping of securities?

A. Some are at the Federal Reserve Bank at Denver and some are at the First National Bank of Denver.

Q. Where does your bank engage in Fed Funds transactions?

A. Colorado Springs National Bank of Colorado Springs.

Q. Does your bank have a Denver correspondent?

A. Yes.

Q. Would you name that correspondent?

A. First National Bank of Denver.

Q. What do they do for you precisely?

A. Well, very little.

Q. Do you need a correspondent bank in Denver?

[931] A. No.

Q. Are the services you have just described sold to you as a package by various banks or are they sold on their individual merits?

A. They are sold individually.

MR. SCHWARZ: No further questions.

[932]

CROSS-EXAMINATION

By MR. LIPKOWITZ:

Q. Mr. Postles, would you tell us how big Northern National Bank is?

A. Our total assets are approximately eight and a half million dollars.

Q. And is your bank a downtown bank?

A. It is a suburban bank.

Q. In a suburban section of Colorado Springs?

A. Well, I should have answered the other question by saying it was an outlying bank.

Q. Does your bank have many occasions to make large loans for which you would need an overline?

A. A few occasions.

Q. Your bank is a national bank, so I take it you are required to be a member of the Federal Reserve Bank of Kansas City with its branch here in Denver?

A. Yes.

Q. And you must maintain reserves based on the amount of deposits you have at your bank?

A. Yes.

Q. And as a member of the Federal Reserve Bank, you are entitled to use these services at the Federal Reserve Bank, is that correct?

A. Yes.

[933] Q. Are there any extra fees to use these services?

A. No.

Q. Now, you also said that you use some services at First National Bank of Denver, is that correct?

A. Yes.

Q. And you maintain a correspondent account at the First National Bank of Denver?

A. Yes.

Q. You have to keep some money then at the First National Bank of Denver?

A. I am not required to keep any money at the First National Bank of Denver.

Q. Well, would they provide services to you for free?

A. They don't provide anything for me for free now.

Q. Well, you maintain an account at the First National Bank of Denver?

A. I do.

Q. This is true despite the fact that you get some of these services from the Federal Reserve Bank in Denver?

A. I don't understand.

Q. You have testified that you get services at the Federal Reserve Bank of Denver.

A. Yes.

THE COURT: He said he cleared his checks there. I think this has something to do with his account.

[934] Q. You said, for example, that you do some of your safekeeping at the Federal Reserve Bank and some at the First National Bank of Denver.

A. Yes.

Q. Why do you keep a correspondent bank at the First National Bank of Denver? Costs you money, doesn't it? You don't get any interest at the First National Bank of Denver on the money you keep there, do you?

A. No.

Q. Can you use the Fed for overlines?

A. No.

Q. Do you keep an account at the Colorado Springs National Bank?

A. Yes.

Q. Do you get any interest on the money you keep at Colorado Springs National Bank?

A. No.

Q. But if you didn't keep that money in those banks, you could presumably lend it out or sell Fed Funds with it or in some way earn some money?

A. Not necessarily.

Q. You can't sell Fed Funds?

A. I can sell Fed Funds.

Q. Is the interest rate on Fed Funds positive or negative?

[935] A. Positive.

Q. So you could earn some money on Fed Funds if you didn't keep the money at Colorado Springs National Bank or First National Bank of Denver or anywhere else you keep money?

A. I keep very little money there, that's what I am trying to say.

Q. Well, why do you keep even a little money there?

A. Well, why?

THE COURT: The First?

THE WITNESS: The First of Denver?
THE COURT: Yes.
THE WITNESS: Well, I only keep about $5,000 there.

Q. Why?
A. Well, we need it sometimes because when we purchase bonds perhaps from a broker in Denver or a broker located someplace else, we have the bonds sent to the First National Bank, and they have to be paid for and so we have a small amount of money there to pay for them when they arrive.
Q. This is a convenient to you?
A. A convenience, yes.
Q. Can you get computer services from the Federal Reserve Bank here in Denver?
A. No.
Q. Do you use any other services from the First National Bank of Denver?
[936] A. I failed to mention that they had my municipal bond portfolio analysis on their computer.
Q. Would the Federal Reserve Bank here in Denver do that for you?
A. No.
Q. Does Colorado Springs National Bank offer computer services?
A. No.

MR. LIPKOWITZ: No further questions.

REDIRECT EXAMINATION

By MR. SCHWARZ:

Q. Just one further question, Mr. Postles. Can a non-bank municipal bond house perform a bond analysis of a municipal bond portfolio?
A. On a computer service, is that what you are asking?
Q. Analysis?
A. Yes.

MR. SCHWARZ: No further questions.

RECROSS-EXAMINATION

By MR. LIPKOWITZ:

Q. But you find it convenient to use First National Bank of Denver's municipal bond analysis?
A. Yes.

MR. LIPKOWITZ: No further questions.

MR. SCHWARZ: That's all, Your Honor.

[937] THE COURT: You may be excused from further attendance.

(Witness excused.)

[938] MR. SCHWARZ: Defendants call Mr. Lester Pagels.

LESTER R. PAGELS,

a witness called by and on behalf of the defendants, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. SCHWARZ:

THE COURT: Please state your name, address and occupation.

THE WITNESS: My name is Lester R. Pagels, P-a-g-e-l-s, 1341 Allison Avenue, Canon City, Colorado. I am president of the First National Bank of Canon City.

Q. (By Mr. Schwarz) Mr. Pagels, where does your bank clear its checks?

A. Federal Reserve Bank in Denver and the First National Bank of Colorado Springs.

Q. Do you find the Federal Reserve Bank in Denver an acceptable substitute for clearing checks as opposed to other Denver banks?

A. Yes.

Q. Where does your bank place its overline loans?

A. First National Bank of Pueblo and First National Bank of Colorado Springs.

Q. Where does your bank do its bond trading?

A. 99 per cent of my municipal bond portfolio is handled by a Denver broker.

[939] Q. Is this broker a bank?

A. No.

Q. Where does your bank have its computer work done?

A. First National Bank of Colorado Springs.

Q. How about its municipal bond analysis?

A. That is all done by our broker.

Q. Where does your bank keep its escrow for state deposits?

A. We have one pledged item at the First National Bank

of Denver which is the guaranteed portion of an SBA loan which is pledged for the state funds which we have. The rest of our municipal bonds are all held at the Federal Reserve Bank.

Q. Do you consider the Federal Reserve Bank to provide equivalent services in this area?

A. Yes.

Q. Where does your bank do its safekeeping?

A. First National Bank of Denver does and has had for a number of years safekeeping items for two customers.

Q. And the other safekeeping?

A. Is done at our own bank.

Q. Where does your bank purchase and sell its federal funds?

A. Handled by the First National Bank of Colorado Springs per telephone instruction.

Q. In addition to the items you have just mentioned, do [940] you have any other Denver correspondent relationships with a bank?

A. No.

Q. Do you need a Denver bank correspondent?

A. No.

Q. Are these services you have just described sold to you at your bank as a package or on their individual merits?

A. No. They are basically looked at individually.

MR. SCHWARZ: No further questions.

CROSS-EXAMINATION

By MR. MALASKY:

Q. Mr. Pagels, you stated that you used the First National Bank of Pueblo and the First National Bank of Colorado Springs. Does your bank presently owe any money to either of those banks?

A. No, not the bank as such, no.

Q. Do you owe any money to those banks personally?

A. Yes.

MR. SCHWARZ: Objection, Your Honor. This is beyond the scope of the direct, and also irrelevant.

THE COURT: Do you wish to pursue this?

MR. MALASKY: Well, Your Honor, I believe that the gentleman does have some bank stock loans with those banks and may affect the relationships he has.

MR. SCHWARZ: All we inquired into in direct, Your [941] Honor, is the simple fact where he obtains his correspondent balances and where he obtains——

THE COURT: What do you propose to show?

MR. MALASKY: Well, I think this is perhaps a reason why he maintains his correspondent accounts in Colorado Springs or Pueblo; is partially at least due to the fact that he does personally owe money to both of those banks.

THE COURT: Is that true, Mr. Pagels? Is that why you maintain these accounts in Colorado Springs and Pueblo?

THE WITNESS: No. With counsel's permission I would elaborate a little bit.

THE COURT: You can have my permission.

THE WITNESS: I suppose if I should borrow money or request anything I should have the First National Bank of Denver, because they were very instrumental in bringing me to Colorado.

Q. (By Mr. Malasky) Would you explain how that came about?

A. Well, at the time I was hoping to relocate in Colorado, it was done so through the First National Bank of Denver.

Q. Where were you located at that time?

A. Lander, Wyoming.

Q. Were you in a bank in Lander?

A. Yes.

Q. Did that bank have a correspondent relationship with [942] the First National Bank of Denver?

A. To be very honest with you I don't remember.

Q. Do you know who the primary correspondent of the Lander bank was?

* * * * *

Q. When you were in Wyoming, what was the correspondent bank your bank in Lander used as a primary correspondent?

A. I don't recall exactly.

Q. Do you know where it was located?

[943] A. One was in Casper and I believe—I'm sure there were accounts in Denver; however, I don't recall whether it was the Central or which bank it was.

Q. But your primary correspondent was in Casper?

A. I believe that is correct.

Q. Now, Mr. Pagels, is it your opinion that it is necessary to have a correspondent bank in the State of Wyoming?

A. Well, it certainly makes it a lot easier to facilitate the handling of items.

Q. Do you think it's a convenience?

A. Yes.

Q. Now, could the Federal Reserve Branch Bank here in Denver handle overlines for you?

A. No.

Q. Could they do your computer work?

A. Not that I am aware of.

Q. Could the Federal Reserve Bank do your bond analysis?

A. I don't believe so.

Q. Could they buy and sell Fed. funds for you?

A. I'm not at all certain. I would assume no.

Q. So that all you can use the Federal Reserve Bank here in Denver for is as I understand the clearing of checks and some miscellaneous safekeeping, is that correct?

A. We clear government checks through the Fed. and safekeeping.

[944] MR. MALASKY: I have no further questions.

REDIRECT EXAMINATION

By MR. SCHWARZ:

Q. Mr. Pagels, where would you have these various services performed assuming you had no personal loan outstanding?

A. First National Bank of Colorado Springs.

MR. SCHWARZ: No further questions.

THE COURT: What is the most essential correspondent service you can think of without which you couldn't even operate?

THE WITNESS: Well, there again I would assume it would be the fact that they clear our checks for us. They do our computer work for us.

THE COURT: This you have to have?

THE WITNESS: Yes.

THE COURT: That is clearing of checks, is that right?

THE WITNESS: As I mentioned it certainly makes it a lot easier to have something in the state to clear them through.

THE COURT: Okay.

Anything further?

MR. MALASKY: No, Your Honor.

MR. SCHWARZ: No, Your Honor.

THE COURT: Then you may be excused from further
945] attendance.

(Witness excused.)

MR. METZGER: The defendants call Dr. Nevins D. Baxter.

NEVINS D. BAXTER,

witness, called by and on behalf of the defendants, being irst duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By MR. METZGER:

THE COURT: State your name, address and occupation, lease.

946] THE WITNESS: Nevins D. Baxter, 2450 Virginia Avenue, Washington, D.C. I am an economist; Vice-President and Director of Economic Research at Mathematics, Incorporated.

Q. What is Mathematics, Incorporated, Doctor?

A. It's a private research and consulting firm doing work for various federal government agencies, for state and localities, for private business organizations, including banks and financial institutions.

Q. What are your duties as vice-president of this organization?

A. I am in charge of the economic research division which consists of some 20 professionals. We conduct studies for our clients. My responsibilities include supervising the quality of the work, attain personnel, and working as a consultant on assignments myself.

Q. Dr. Baxter, I note from your resume that you have your baccalaureate from Columbia University. Were there any honors associated with that degree?

A. Yes, I received my summa cum laude and was elected to Phi Beta Kappa.

Q. And you received your Master's and doctorate from Princeton? Were there any honors associated with those degrees?

A. I had various fellowships during my tenure at Princeton.

[947] Q. And after Princeton I believe you taught at Wharton School?

A. I was Assistant Professor of Finance at the Wharton School for five years, 1964 through 1969.

THE COURT: Isn't this all in here?

MR. METZGER: Yes, Your Honor.

THE COURT: Do you have any objection to receiving this?

MR. SCHOEPKE: No, Your Honor. We have raised no objections.

THE COURT: It is received. We take notice of it.

MR. METZGER: Just briefly, Your Honor, to bring out certain qualifications with regard to banking——

Q. You consult with Federal Reserve Board and the Comptroller of the Currency?

A. With the Federal Reserve Bank of Philadelphia and with the Comptroller of the Currency, yes.

Q. And have you also consulted with banks in various parts of the country?

A. Yes, large and small.

Q. Have you written extensively in the field of banking?

A. I have written a number of articles, monographs, and they are listed on the biography.

Q. Doctor, plaintiff herein has advised the Court [948] that all banking markets in the United States are highly concentrated. And, the Congress in amending the Clayton Act spoke of its concern for a rising tide of economic concentration. Are those terms being used in the same sense in both contexts?

A. Well, I believe that the congressional standard looked towards a rising tide of economic concentration in the nation as a whole. We were concerned with various industries and with national benchmarks and with the number of firms declining and the importance of the largest firms in a national market becoming greater. Highly concentrated, as I interpret the sense of the plaintiff's testimony, refers simply to numbers in certain markets describing certain market shares. It's simply a numerical standing.

[949] Q. Did the term "overly concentrated," as used by the Congress imply anything with regard to structure or economies of scale?

THE COURT: You mean a small number of competitors occupying or dividing up the market share?

THE WITNESS: Yes, and looking at national trends across many industries.

THE COURT: You mean you were characterizing how you interpret the plaintiff's position, is that right?

THE WITNESS: Not at first. I was——

THE COURT: That's what I am asking you about.

THE WITNESS: Well, as I interpreted the definition of highly concentrated here was simply in terms of certain market shares that they were applying to banking at the present time.

Q. The plaintiff?

A. The plaintiff, yes.

Q. And was the Congress' concern with levels of concentration which approximated economies of scale or was it something that went beyond that?

A. They were concerned with levels of concentration that went far beyond the advantages of economies of scale.

Q. So, if we have an industry which had five or six entrants and those five or six entrants roughly approximated the maximum efficiencies associated or the major efficiencies [950] associated with that business, would that be considered a highly—an overly concentrated industry?

A. I do not believe so.

* * * * *

[951] Q. Doctor, is banking as an industry concentrated or trending that way?

A. I would say no, Mr. Metzger. To take some national figures, in 1940, the ten largest banks in the United States had 27 percent of the assets, and at the present time, 1969 figures, 25 percent, slightly trending downward. If one [952] looks to the 100 largest banks, it was 57 percent in 1940, 51 percent today. If one looks at local markets, one gets very much the same picture.

Q. And, Doctor, referring to Defendants' Exhibit Number 20, which relates to the number of banks in the United States, how would you comment on the trends on numbers of institutions?

A. The number of banks increased rather steadily from the beginning dates of this table and the beginning of the national banking system, and in 1900 reached approximately the same number as we have today. There was then a very rapid rise from 1900 until right through 1920 or the early 1920s, and then a very rapid decline through the '20s and '30s, and since 1945 there has been a slight increase.

* * * * *

[954] Q. Doctor, do the numbers of banks in the United States offer any indication to you as to the trends in banking nationally?

A. Insofar as numbers show the number of alternatives on a total national market, they do describe the trends, yes.

Q. What trend do you observe over the immediate past?

A. In the last ten years there has been an increase in the absolute number of banks. There have been, I believe, 2500 banks chartered nationally.

Q. Doctor, what are the convenience of banks to the public, that is, the availability of banking facilities and offices to the public? Could you look at Defendants' Exhibits Numbers 22 and 23?

A. Well, they look at population per bank and per banking office in various states, and the population per banking office in recent years has declined as branches have been established in states permitting branches. There was a very rapid decline from 1880 to 1920 in the population per bank. The population per banking office has in mjore recent years declined to approximately the level I believe in 1920.

MR. SCHOEPKE: Now, Your Honor, with all due respect——

Q. 1900?

[955] A. 1900.

* * * * *

Q. Doctor, we have addressed ourselves to the development of the banking structure in the United States. Could you look specifically to the trends in Colorado which are responsible for the current structure of that market, and I call your attention specifically, Doctor, to Defendants' Exhibit Number 28.

A. First, let me suggest that Colorado, being an agricultural state, had a very rapid decline in the number of banks during the 1920s and an increase in recent years. Exhibit 28 shows these trends. In the early years of this exhibit, the chartering—the minimum capital required to [956] charter a national bank was $50,000. They were mostly private banks in the state. Te number of national banks increased steadily. In 1877, the state chartering authorities began to operate and the minimum capital there was $30,000. The states and national banks then both continued to grant charters through the last few decades of the 19th Century, and you notice in the crash of 1893 there was a decline in the number of banks, mostly in state banks with the lower capital requirements and in private banks which were not so regulated.

In 1900——

Q. Doctor, you know what happened in Denver in 1893?

A. Yes, there were 17 banks in Denver and in a four-day period 12 of those banks closed.

* * * * *

[957] Q. We are at 1900.

A. Yes, Mr. Metzger.

THE COURT: Covered the panic of 1893.

A. (Continued) In 1900 national bank minimum capital requirements were reduced to $25,000 from $50,000 and the significance of this is a very rapid increase in the number of national banks chartered, starting from that year. In 1907, the state capital requirements were reduced to $10,000 from $30,000, and one can then see the great race between the national and state banking authorities to charter new [958] banks, very rapid increase from 197 banks in the state in 1907 to 404 banks in 1920, which was the peak in Colorado and I believe the peak or very close to the peak year in the nation as a whole.

Now, from that time, there is a steady decline in the number of banks, a very rapid decline during the 1920s, as I have mentioned, in an agricultural area. Although it was a time of general prosperity in the nation as a whole, the agricultural states were not really sharing in that prosperity, and we see that by 1929 the number of banks had been cut to 275 and——

Q. To what do you attribute this decline, Doctor?

A. There was—due to the overbanking that had existed, there was a steady drop due to a number of bank failures, and during the 1930s this trend continued, a drop in the number of banks to 145. In 1939—interestingly enough, the deposits in Colorado in that year, in 1939, were the same as they were in 1920, or very close. 1938 and 1920 were very, very close, but the number of banks had been reduced by about 60 percent.

Slight decline during the war years to a low of 138 in 1945 and then a gradual increase again in the number of banks going through the '40s and '50s. In 1960 there was 164 banks, representing 162 banking organizations. The Western Bancorporation owned three banks in that year, [959] accounting for that difference. Since that time there has been a steady increase in the number of banks, which

goes in with the national trend, but much more striking here. There are now 228 banks, representing 198 banking organizations, so both factors are up, and one might also note parenthetically in the last ten years the share of the total Colorado market held by the First National Bank of Denver has declined a little better than two percentage points.

Q. What do these numbers, particularly referring to 1960 to 1970, tell you with regard to trends in banking in Colorado, Doctor?

A. Insofar as the number of banks in the state, the number of alternatives in the state is meaningful and important. One has a trend showing an increase in the number of banks and a decline in the concentration of—if one would use that term.

Q. Referring to Defendants' Exhibit Number 29, Doctor, which speaks of concentration and the deposit concentration of the five largest banking organizations in the State of Colorado, the years 1961 and 1970, would you care to comment on the significance of this document, sir?

A. I—well, I think it is very important to point out here what the statewide figures mean and what the statewide trends mean, and I would caution that implicit in an analysis of these sorts of figures is an acceptance that [960] the state is really a meaningful market, because one is talking about the alternatives in the state and we have been talking about the number of banks, and now I turn to talk about market shares, about concentration ratios of the largest banks. Implicit in that is this assumption that the state is a market, that these firms do their commercial banking business within the state, do very little from outside the state, that these are the only effective competitors within this geographic region. I don't happen to think that the state is a meaningful economic market on which to judge these trends, on which to judge competition and concentration, but, nonetheless, these sorts of figures have been used as benchmarks elsewhere, and with that caution and in that context I can describe what trends they show.

Q. Doctor, do you believe then that there are a substantial number of customers who are statewide in scope?

A. I believe that there are very few customers who are limited to the state as a market, if any. Customers who are large enough to shop around the state are undoubtedly large enough to consider themselves in a national or certainly in a regional market for banking services. Most cus-

tomers are essentially limited to a relatively local area. Larger firms can travel significant or substantial distances, so I would believe there would be very few who would consider themselves confined to a state.

[961] Q. For the bulk of banking customers, Doctor, how would you characterize the nature of their banking market?

A. I would say they were essentially local in nature.

Q. Thank you, Doctor. And referring to Defendants' Exhibit Number 29, what significance do you attribute to this exhibit with these caveats?

A. Well, with these caveats, the share of the market, the share of Colorado deposits held by the five largest banking organizations has declined 3.2 percent, from 52 percent to 48.8 percent, over the last decade, and that's 48.8 percent including the acquisition of the First National Bank of Greeley by the First National Bancorporation.

[962] Q. Then does this document support a contention of a trend towards concentration in the State of Colorado?

A. No, it absolutely does not.

Q. Turning your attention, Doctor, to Defendants' Exhibit No. 30, and again recognize your caveats with regard to the validity of statewide data, I ask you to examine the context of Colorado in the share of deposits controlled by the largest banks in Colorado with all other states.

A. It ranks No. 33 and therefore is just about in the bottom third of the nation in terms of these concentration ratios.

Q. Is it possible, Doctor, to refine these gross statewide concentration ratios in any way?

A. Well, I would be interested in determining the relevant market share of the largest banks as applied to particular classes of customers. Because, particular classes of customers have particular geographic ranges over which they can seek banking services. And since we are concerned with what significance the share of the five largest banks have, we should look at the type of customers that they refer to.

Q. Referring to Defendants' Exhibit No. 35, Doctor, which is excerpted from the Federal Deposit Insurance Corporation's analysis of accounts and deposits, mid-year 1968, would you tell us what this document purports to do, Doctor?

A. Well, it shows the five largest banking organizations [963] in Colorado and their relative shares of deposits

and of the number of accounts by size classification of customers. If we look at the top, at just dollars of deposits, we see that these five largest banking organizations had just over 48 percent of the deposits in the state. But, when we concentrate on depositors with accounts under $1,000, the share is just 25 percent. On the other hands, as a matter of arithmetic to balance it out, when we concentrate on depositors with accounts over $100,000, we are up at 78 percent. So these larger banking organizations are relatively more important as regards the largest depositors, and much less important as regards the smallest depositors.

* * * * *

[964] Q. (By Mr. Metzger) Doctor, is there any ongoing theory in the banking field about the nature of deposits of a hundred thousand or larger?

A. At some point there is a cutoff for size of deposits in which we would deem that customer to be in a national market. A hundred thousand dollars is a cutoff point that is widely used. In any event, we can certainly say that these largest customers for which the five largest banking organizations in Colorado are most important—we can say that these customers have much wider alternatives than Colorado and we can certainly say that the smallest customers which are limited to their local areas, the largest banking organizations are less important in terms of smallest customers.

Q. Does the First National Bancorporation, both in dollars and numbers, closely accord with those in other large banking organizations? Or, is it more striking?

A. Well, it is somewhat more striking, Mr. Metzger. Of [965] the 15 percent of the total number that the First National Bancorporation holds, it has 5.7 percent in the zero to a thousand dollar depositor category so that is more striking than the 25 to 48 for all organizations and similarly they have 27 percent of the market in this $100,000 and up which is again somewhat more striking than the five as a whole.

Q. And what conclusion would you draw from this exhibit with regard to the smaller customers with which the courts are concerned in protecting in these affiliation cases?

A. The market in terms of this market measure or share of the largest banks is highly unconcentrated.

Q. It at least is at a level considerably different from that which raw data would infer?

A. Yes.

Q. Turning your attention to Defendants' Exhibit No. 31, Doctor, I believe this is a predicate to the next exhibit, is it not?

A. Yes, it just divides the states—this classifies the states by the law regarding the ability to branch, statewide, limited, and no branching.

Q. Turning to Defendants' Exhibit No. 32, Doctor, this breaks down the control of deposits by the five largest banking organizations between the statewide branching states on the one hand and those states which have no or extremely limited branchings. What is the most striking number that you observe [966] on these documents, Doctor?

A. That the statewide branching states as measured in this way have much higher concentration ratios of the five largest banking organizations. The total of 14 states with unlimited branching of 85 percent held by the largest banks, whereas the other states have only 38 percent held by the five largest banks. So, there is quite a substantial difference in this one measure of your—of statewide concentration among these groups of states.

Q. From these numbers, Doctor, would you conclude that the citizens of the statewide branching states have fewer alternatives for banking than the citizens of the limited branching states?

A. No, Mr. Metzger, because we would have to inquire as to what the alternatives were as to the context of the local banking markets. This only tells us about the state as a whole. It doesn't tell us about how many alternatives they have within the markets in which the customers do business.

Q. Turning, Doctor, to Defendants' Exhibits No. 33 and 34, is this an attempt to meet that inquiry?

A. Yes. We were interested in comparing the unlimited statewide branching states with the limited and unit banking states in communities of specific size ranges, five to ten thousand, ten to fifteen, fifteen to thirty, and thirty to fifty. The first table of these two, No. 33, Defendants' [967] Exhibit 33 shows that taking the—for each size of city——

THE COURT: Hold up just a second. Is this an issue in the case? Is there a dispute as to the philosophical soundness

of branch banking against unit banking? I didn't think it was.

MR. METZGER: It is the contention of the plaintiff herein, Your Honor, that vertical foreclosure in the State of Colorado has reached a point beyond which it ought not be permitted to go in this correspondent banking field.

THE COURT: Well, I'm not going to rule in favor of them as to any imaginary horribles, and I am not going to rule in favor of you as to their nonexistence. So, just make up your minds to that. Whatever my ruling will be, it is not going to affect other banks in this state. I'm not going to make findings with respect to this kind of matter. Because, I don't view it as an issue in the case. So I don't think either one of you ought to try the other pending cases in this case.

MR. METZGER: No, I was not trying to try pending cases, Your Honor.

The COURT: Well, you would be much obliged if I would give you some kind of finding that would close the door to these other cases.

MR. METZGER: That was not my intention at all, Your Honor. I'm restricting myself to the question of whether or not the unit banking system better serves the needs of the [968] customer than does the significant branching or their alternative, the holding company structure, throughout a state. This is the only question toward which we are addressing ourselves here.

MR. SCHOEPKE: I don't believe we ever mentioned that in our complaint. We never raised the relative merits of branch banking versus holding company banking.

THE COURT: I don't see how you could because there is no per se problem here.

MR. SCHOEPKE: This is a matter for the Colorado State——

THE COURT: Acquisitions in general are not condemned by statute. This is for the Congress to determine I suppose and not—It may be interesting, but I just don't see that I am in any position to pass on it in the first place. I don't see that it's an issue, secondly.

MR. METZGER: All right, Your Honor. Let's pass on from that exhibit to the particular size category we are talking about.

Q. Doctor, could you turn to the cities of the thirty to fifty thousand population and tell us how many alternatives there are in cities of similar size to Greeley?

A. Still on Table 33, Mr. Metzger, where we are looking at the average number of commercial banks per city. Greeley with six banks joins the category of five or more. There are [969] only 15 percent of the cities in the United States of 126 cities in the United States in this size category, only 15 percent of these have five or more banks. Greeley has six. There are only two banks with more——

Q. Cities?

A. Cities with more banks than Greeley in this size category.

There is a city with seven and one with ten.

Q. Turning to the table in Exhibit No. 34, Doctor, which concerns itself with banking organizations, would you care to comment upon the posture of Greeley with respect to all cities of similar size in banking organizations?

A. Yes, there are four banking organizations in Greeley. Twenty-seven percent of the cities in the country have four banking organizations. Only 8.7 percent of these cities have five or more. So Greeley stands with—and I should point out that 48 percent have three banking organizations, 16 percent have two banking organizations. So Greeley—there are only 8.7 percent of the cities that have more banking organizations than Greeley, cities with the same population categories.

Q. And how many banks do those cities have, Doctor, if you know?

A. I believe that there is one with seven and the remaining have five, or one with six and the remaining have five.

[970] Q. So that Greeley has—in cities of its size category, Greeley has as many or more banking organizations of more than 90 percent of the cities of its size category?

A. That is correct.

Q. Does this indicate to you, Doctor, that the City of Greeley is poorly served in the number of banking alternatives?

A. Given these figures of banking organizations relative to the size of the city by all national benchmarks, I would conclude that Greeley is well served in terms of number of alternatives.

Q. Doctor, turning your attention to Exhibit No. 26 and Exhibit No. 27, which deal with the national ranking of the First National Bank of Denver and the First National Bank of Greeley, will you tell us what these exhibits mean to you, Doctor?

A. Well, they simply show that the First National Bank of Denver—we are dealing with a bank which is 112th in the nation, having declined 14 notches since 1963, and looking at Greeley we are talking about a bank which has declined from better than 1200 in the nation to 1351. So it has declined over 150 notches in the last decade.

The First National Bank of Denver is just sort of at the borderline of being considered a reasonably large bank on national standards. The First National Bank of Greeley is a medium-sized bank.

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[972] Q. Doctor, referring to Defendants' Exhibit No. 27, is it not true that the deposits of the First National Bank of Greeley have doubled in this time span?

A. Yes, they have doubled, Mr. Metzger, but during this period the deposits in the nation as a whole have significantly more than doubled from 230 billion to 528 billion. So Greeley didn't grow as rapidly as the nation as a whole although the momentum of their business did give them growth.

Q. What does this suggest to you with regard to the First National Bank of Greeley, Doctor?

A. Well, it would imply that either the community didn't do as well in deposit growth as the nation as a whole or that [973] the bank, as a part of its community, that its market share within its community declined and it is in fact the second case which is true.

MR. METZGER: Your Honor, may it please the Court, if the Court is inclined to take a morning recess, this is a convenient breaking point.

THE COURT: All right.

I was kind of curious—Do you mean to say—are you saying that the First National Bank of Denver is experiencing slippage?

THE WITNESS: No, Your Honor. Greeley.

THE COURT: Oh.

THE WITNESS: I was discussing from Table 27 the fact—Mr. Metzger asked me about the fact that the deposits had nearly doubled during this period in Greeley and I suggested that this was in fact slower than the national average rate of deposit growth and indeed this was due to the fact that they had lost part of this market share, a fact which has been brought out previously in the record.

THE COURT: I had been led to believe that the First National Bank of Greeley was showing some progress in the last few years whereas it has been losing its share of the market theretofore. But, maybe this isn't true.

Okay. We will take a short recess.

(Whereupon the trial recessed at 10:28 a.m.)

[974] (After a recess, the Court reconvened at 10:52 o'clock a.m.)

Q. (By Mr. Metzger) To digress momentarily, Doctor, what was the share of deposits of the Greeley banks held by the First National Bank of Greeley in 1965?

THE COURT: In relationship to——

MR. METZGER: To other banks in Greeley.

THE COURT: Okay.

A. Total Greeley was 36.4 percent.

Q. And today?

A. 32.6 percent.

THE COURT: What was that 36?

THE WITNESS: 36.4 in 1965, and in 1970 it was 32.6, so it was that the decline that you asked me about before the recess has been steady.

THE COURT: Yes. Of course, their deposits have been gaining, nevertheless, isn't that right? I mean, what you are saying is they have been making a slower gain?

THE WITNESS: They haven't done as well as the immediate competitors in the City of Greeley have done, relatively. They have shown——

THE COURT: Well, they are competing with two bank holding company organizations, for one thing.

THE WITNESS: Well, I think later we will get into the fact that most of the—that the ABC banks have done [975] relatively well. The United Bank of Greeley has not increased its market share since United has been in there, so it has been mostly the ABC banks, the Greeley National and its two affiliates, which have taken the largest share of the growth.

Q. Doctor, does this relative decline in the First National Bank of Greeley long predate the formation of these holding companies which compete with the First National of Greeley?

A. Yes, Mr. Metzger, it has been steady since 1950, steady decline from just under 50 percent of the market in 1950 to

under a third today. It is the Defendants' Exhibit 39 that has those figures and I will be talking about.

THE COURT: You are going to talk about your opinion as to what this is attributable to?

THE WITNESS: Yes.

THE COURT: Later on?

THE WITNESS: Yes.

Q. Doctor, addressing ourselves to the allegations that this affiliation would tend to entrench the First National Bank of Greeley in its market position to the detriment of developing competition in Weld County, can you tell us what you understand this term "entrenchment" to mean?

A. I would think of the term "entrenchment," Your Honor, [976] in terms of two separate meanings. The notion of entrenchment whereby a market share is achieved through better performance, through building a better mousetrap, through offering a wider variety of services at lower prices, this type of growth in market share, in industries where there is nevertheless reasonably free entry or quite free entry would not be the notion of entrenchment as I understand the plaintiff to be using it in this case. The other notion of entrenchment, where market share, accompanied with substantial barriers of entry, increasing market share achieved by using large financial resources to keep new firms out of the market, this type of entrenchment is, I think, undesirable, but we would have to distinguish between the two types of larger market share achieved by an entrant into a market.

THE COURT: Well, I think they complain about the results as well as the nature of it, the character of it. I think what they say is, once—what their witness said is that, once the condition exists, that you are going to have undesirable practices. They are going to just flow automatically from the fact of this condition.

THE WITNESS: Well, Your Honor, if I may respond to that, in an industry where a firm by virtue of its size is able to keep new entrants out, then this theoretical proposition is a valid one, could be a valid one. You could have undesirable effects once a firm achieves a large size. [977] It can then turn around and raise its prices and not do a very good job. In an industry where entry is relatively free, where capital requirements, where technological require-

ments are not enormous, then once such inferior performance came about or the threat of such inferior performance came about, the chartering authorities in my judgment would recognize this and there would be people knocking on the door to go in and compete, because the know how is there and the capital is there.

Only if the performance remained good, superior, and advantages were taken of the scale economies that exist would there be no incentive to allow a new entrant to come in and compete away some of these excess profits, so I think this is a distinction which we must draw in this context.

Q. In that context, Dr. Baxter, how many new banks have been organized in the United States in the past ten years?

A. I believe the figure is about 2,500, Mr. Metzger.

Q. And in Colorado?

A. Som 600.

Q. How many zeros do we have in that?

A. Some 60, excuse me. Excuse me.

Q. Are these entries into a given industry in a decade and into a given segment of that industry in a decade consistent with difficult entry conditions, high barrier, [978] technological or capital barrier?

A. No, they are not consistent.

Q. What has the question of barriers to entry via utilization of market power such as advertising done?

A. Well, in some industries advertising can be used effectively as a tool for entrenchment. Where products are not highly differentiated and when consumers are making purchase decisions very frequently, high turnover type industires, firms can spend a great deal of money effectively on advertising and thereby change consumer loyalties, and this is the way they effectively differentiate their products. I do not think that banking is that sort of industry. In banking there are established relationships based on quality of service, knowledge of the individuals and so on. You don't change your banking relationships daily, although it can, of course, change when circumstances would require it.

Q. Would the piggy-back advantage of my name appearing on a Denver advertisement be a significant advantage in a Greeley bank?

A. I don't think so at all.

Q. We have discussed thus far some theoretical aspects

of the argument re entrenchment. Do you believe that this theoretical discussion carries us very far, Doctor?

A. Well, I would much prefer to have some hard evidence supporting it, based on what has actually happened [979] in the state, whether entrenchment in terms of increasing market share, in terms of actual barriers to entry, have actually existed, and I would look first to the acquisitions of the First National Bancorporation, but they have not had any experience with acquisitions that we can learn anything from, so, therefore, I would want to address myself to the acquisitions of the other holding companies in the State of Colorado and see what happened in the particular markets that they entered in terms of market shares, in terms of new entrants.

THE COURT: Well, I suppose it would be relevant to inquire as to what the relationship of United Banks has been with the First, because that's going to be an important——

MR. METZGER: We will get to——

THE COURT: —relationship in the Greeley market, I suppose. I mean, as the plaintiff maintains, it is just as clear as can be that once you get these concentrated entities in there, that they are going to divide up the market and engage in parallelism, so I suppose it would be pertinent to inquire as to whether they have done this in any other place or in Denver, particularly where they are closer.

MR. METZGER: We are getting directly to that point, Your Honor.

[980] Q. Turning first to the Western Bancorporation, which is the oldest holding company and has the longest history, Doctor——

THE COURT: The biggest, too, isn't it?

MR. METZGER: The largest, the very largest.

THE WITNESS: Eleven billion, Your Honor.

THE COURT: All right.

Q. (Continued) Have you examined the market in which the Western Bancorporation has operated since it first acquired banks in Colorado, Dr. Baxter?

A. Yes, I have, sir. In 1956, they entered Fort Collins. There has been virtually no change in the market share of the First National Bank of Fort Collins.

Q. What was the position of the First National Bank of Fort Collins at the time they acquired it?

A. It was the largest bank in the market, having just

under 50 percent. I don't have those figures in front of me, but it just had under 50 percent then and remains about the same today.

Q. Would you believe me if I told you from Exhibit 2 that you derive it as just over 50 percent in both instances?

A. I apologize, sir.

THE COURT: He would believe anything you said, I believe. Okay.

Q. And has there been any other changes in market [981] structure in Fort Collins?

A. Yes, there have been two new banks organized. In 1962, University, which now has deposits of 6.8 million dollars, and in 1963, the Rocky Mountain Bank, which now has a deposit base of 3.5 million, so the substantial size of the First National Bank of Fort Collins and the acquisition of that bank by the Western Bancorporation did not prevent in any way these two new banks from entering the Fort Collins market and from doing reasonably well and being perfectly viable institutions.

Q. Did you analyze the impact of the Western Bancorporation in any other markets in the state?

A. Yes, in both other markets, Mr. Metzger.

The American Bank, acquired in 1956, had then 5.7 percent of the Denver market. Now it is at 6.1 percent, so there has been a slight increase, but nothing very striking. They have maintained themselves and their growth in Denver and picked up just a very little bit.

Q. Have new banks organized in Denver during that period?

A. Many, Mr. Metzger.

Q. And any other banks?

A. Yes, in Englewood they acquired the Continental Bank in 1956. There were two banks in Englewood. There are now three: Republic National was chartered in 1965. It is [982] up to $8 million in deposits. The relative shares of the First National and the Continental have not changed significantly since 1956, so this then is the experience of the three markets that Western has entered.

[983] Q. Doctor, turning to those markets in which the United Banks of Colorado have had some experience, would you look at Defendants' Exhibit No. 36 through 39.

A. Yes.

36 refers to Boulder. What's happened in the Boulder

market. United bought Mercantile in 1966. At the end of 1965 this bank had 20.1 percent of the Boulder market and—I guess this is the end of 1970, this last figure—it was down to 17.2 percent. So, United lost 3 percentage points in the Boulder market when it entered—since it has entered. And that is anything but the sort of entrenchment effect that one could hypothesize.

Q. And Table 37, Doctor?

A. Table 37 refers to Littleton. United entered in this market in 1964 through the purchase of the Arapahoe Valley Bank. In the same year the First National Bank of Southglenn was chartered as an affiliate of the First National Bancorporation, and despite—I should note that the bank which United bought, Arapahoe Valley, had been growing very rapidly up until they came in and in the years since then has just pick[illegible] up a few points. The other new bank entering the marke[illegible] First National of Southglenn, has done quite well and there is no evidence there of entrenchment either.

Q. And Table 38?

A. Refers to Aurora where United acquired the Bank of [984] Aurora—I believe that was the name of it—in 1963. They then had 41.7 percent of the market. They now have 26.4 percent of the market. The Aurora National Bank which was a newly chartered organization grew very well and now has a market share below—although it was started only in 1963 now has a market share that is larger than the United Bank of Aurora, so this independent bank evidently did a pretty good job in attracting customers in that particular community even though United was there.

Q. And has there been a new charter in Aurora within the last year, Doctor?

A. Yes. There was a new bank organized in 1971.

Q. Turning your attention to Defendants' Exhibit No. 39, Doctor——

A. Well, this is the Greeley market which is of particular interest to me here. We have noted already the decline of the First National Bank of Greeley's share. But, addressing ourselves to the former Weld County Bank, marked here as United Bank of Greeley, its share was 21.2 percent in 1964. United came in in 1965. This share has not significantly changed. It was down a bit and has sort of fluctuated. It's now 21.8 percent. So United has not picked up any portion of their market since they came into Greeley. At the

same time the new banks that were chartered in 1962 and 1963 have done pretty well.

[985] Q. Doctor, referring to the market share of the ABC Banks, when were these Greeley banks affiliated with the holding company?

A. Just about one year ago.

Q. So then would you say that the growth of the Greeley affiliate banks derive from its position as a member of a holding company?

A. No, it would have nothing to do with that.

Q. And basically its share has risen from 33 percent to 43 percent? On what basis would you justify that increase, Doctor?

A. Probably done a better job, Mr. Metzger?

Q. Summing up then on the question of entrenchment, Doctor, and addressing yourself to the real evidence that we have encountered on the subject, what would you say the evidence in this case shows concerning the likelihood that the First National Bancorporation would entrench a market share for the First National Bank of Greeley?

A. I think that there is no theoretical basis and no actual basis in terms of what has happened to believe that any sort of such entrenchment would take place.

Q. It has been suggested, Doctor, that this affiliation might trigger other affiliations by other banks with other holding companies. Have you considered the question of triggering as it applies to this industry, Doctor?

[986] A. I think that the notion of triggering is not at all applicable in an industry regulated the way that banking is. Every merger, every acquisition of a bank holding company is looked at very carefully by the approving agencies and by other agencies which submitted advisory opinions. It is possible in this industry to catch any particular merger or acquisition which might be anticompetitive—which is deemed to be anticompetitive—it's possible to catch it before it occurs. In other industries where the concepts of triggering has been used you have one particular type of acquisition and then you can have a large number of them before you test it again through the courts. In this type of regulated industry where there are opinions given and permission and authority must be given, I don't think the concept makes any sense.

Q. Do you know of any other industry besides banking in which the antitrust division of the Department of Justice is

required to make a specific evaluation of the competitive effects of merger or affiliation?

A. I do not.

Q. Did this bear upon your judgment on the question of triggering?

A. Yes indeed.

THE COURT: Well, there is a trend going on, isn't there, in these acquisitions? Hasn't there been for a period of several years?

[987] THE WITNESS: In the acquisitions in Colorado and specific?

THE COURT: Yes.

THE WITNESS: Well, I think that there is a change in the banking structure taking place through these acquisitions.

THE COURT: Well, they have been going on. I mean I don't know what triggered them but I suppose a lot of factors; a need perhaps to compete with the building and loan society may have had something to do with it. But, in any event, the board of governors issues these consents pretty readily, do they not?

Q. (By Mr. Metzger) Doctor, would you address yourself to that question of why the board of governors is approving the movement of holding companies across the State of Colorado? And other states.

A. From reading their opinions and in terms of my own judgment, I believe that the acquisitions by holding companies in the State of Colorado allows substantial advantages; larger organizations in terms of economies of scale and in terms of better performance which will be things that I will be addressing myself to.

And that in the judgment of the board of governors as they have stated the judgment that I agree, these types of acquisitions can have substantially pro-competitive effects in [988] the areas that the holding companies are moving into. And, in that sense as the banking structure changes from the essentially unit banking structure to one where holding companies might be represented in more of the major cities, that this would have concurrent with it a more competitive banking industry.

Q. And is this opinion reflected in opinions you have recently read by the Federal Reserve Board?

A. Yes, it is.

Q. And do you believe that there are economies of scale

dependent upon the movement of holding companies into these markets?

A. I do.

Q. And just to carry that point a bit further, Doctor, do you believe that the development of statewide holding companies is an affirmative or negative element in the convenience of the populace of these areas in terms of the ultimate number of outlets that you may seek in these markets?

A. You would have more outlets in more local banking markets with a holding company structure than you will with a unit banking structure. And therefore, the competitiveness as well as the convenience in these local markets will be substantially enhanced?

MR. SCHOEPKE: Once again, Your Honor, I must object that the basis of this suit is not an attack against the holding [989] company system. It is an attack against these particular acquisitions. We have no position as to whether the holding company system per se is good or bad. It's the competitive effect of acquisitions involved in the movement.

THE COURT: I believe though you did offer evidence that if we do this, why, something else will happen in the future. Isn't that right?

MR. SCHOEPKKE: (Nods affirmatively.)

THE COURT: That this will trigger something else. It places us in a position where it will be more difficult to decide favorably to the Department of Justice than some other case in the future. This kind of thing has been offered by you, isn't that right?

MR. SCHOEPKE: Yes, Your Honor. I simply want to make clear, we are not attacking the holding company per se. It is the effect of the particular acquisitions or series of acquisitions or those others that may be triggered that is the core of our inquiry. I simply don't want the Department of Justice to be equated with some position on holding companies per se. Holding company are permissible. That's the law of the land. We are attacking the competitive consequences of one or a series of acquisitions under that law of the land.

Q. (By Mr. Metzger) Let's talk then about specific performance in Greeley, Doctor, and calling your attention to Defendants' Exhibit 39. You have already testified that the [990] market share of the First National Bank of Greeley

has declined from 50 percent to 32 percent in the past 20 years. Have you yourself looked at this bank and attempted to evaluate the reasons for this market share loss?

A. Yes, I have.

I have spent considerable time talking to officers of the bank. My evalautions in—is that in terms of aggressiveness of the bank, in terms of depth of management and ability to get the right people there, that this bank has not done well. The chief executive, Mr. Gilbert, is by his own admission not a banker. He came into the situation some years ago. Mr. Eaton, the executive vice president, has serious health problems and beyond these two top people in the management, my evaluation from my discussions with them was that they were not impressive. They didn't impress me as being aggressive, forward looking bankers, doing sort of—the sort of planning that one would do; the sort of solicitation that one would make on customers, and this type of performance has meant that they just have not kept up.

I would point out that this is much the same as Mr. Thomas's testimony yesterday.

Q. Have you made a similar inquiry into the structure of senior management at the First National Bancorporation?

A. And the First National Bank of Denver, yes, I have. Yes, I have had many meetings with heads of various departments [991] in this bank and we have heard testimony yesterday about management training programs; about the sort of specialized personnel they have and I am very much in accord with what was said yesterday in terms of the generally high quality and training of the sort of people that an organization like that would attract.

* * * * *

[992] Q. And then it is therefore your judgment, Doctor, that the First National Bancorporation can make a significant contribution to this management situation you see in Greeley?

A. Oh, I think that they indeed could do a very good job in terms of going out and getting new business for the bank, by offering better services and in terms of providing management depth, and in terms of providing specialization. Also, the issue of capital—such as in terms of making agricultural loans which we have heard some testimony about and the strong needs in the agricultural area for large lend-

ing without detracting from other types of loans that banks have to make. In this sense I think the First National Bancorporation could also be extremely helpful.

Q. While you are on that subject, Doctor, turning your attention to Defendants' Exhibit No. 8 which has to do with the loan portfolio of the First National Bank of Greeley, would you characterize the lending activity of this bank as characteristic, average or specialized?

A. Well, they are very much specialized in farm lending, Mr. Metzger. 36.7 percent of their loan portfolio in 1969 was in farm lending as compared with only 12 percent for the state. [993] Similarly, their individual loans which is essentially consumer credit, automobile loans and the like, is half of the level of the state and one to four family mortgages, home mortgages, four percent as opposed to nine percent in the state.

Q. How does—how do these figures compare with their principal competitors in Greeley, Doctor?

A. The Greeley National Bank—this is not on this particular exhibit, incidentally, Mr. Metzger. But, I did do some calculations of this. In 1969 Greeley National Bank had the same emphasis as the First National Bank of Greeley in agricultural lending. But, United Bank had only 29 percent instead of 37 percent in farm lending. So we are talking here about an agricultural area. The question of why they are so oriented could be partly due to the type of area there and we know that Weld County has a high demand for agricultural loans, or, it could be due to their particular orientation within the bank. We see that the United Bank of Greeley is not as heavily into agricultural loans. If we look, however, at individual lending, here, I think the picture is more striking, where, United and Greeley National were both at just about the national average—the state average. Excuse me. The state average was 28.3 percent of the loan portfolio. The Greeley National was 28.1 percent and United 28.5 percent. So they were right at the state average. The First National of Greeley was at half that average in terms of loans to [994] individuals. Again, in terms of mortgage lending United in fact wasn't making much in the way of one family mortgage loans. They were 3.2 percent. So they were much the same as the First of Greeley.

But Greeley National Bank was up to 13.6 percent for its loan portfolio.

MR. SCHOEPKE: Excuse me, Your Honor, for interrupting, but the witness was discussing Exhibit No. 8 and in the course of his answer he got into United Bank and I wonder what document he is referring to now.

MR. METZGER: He's not referring to a document—these tables here that were prepared.

MR. SCHOEPKE: Thank you.

Q. And, Doctor, I believe you said that the First National Bank of Greeley's relative imbalance could be corrected by what attributes of the First National Bancorporation?

A. Well, the First National Bancorporation could engage in heavier farm lending; could keep up the demands—with the demand for farm loans through an agricultural subsidiary or through other means and at the same time be able to serve the individual loan market and the one to four family mortgage market. It could do so not only with capital that it would provide but also with the specialists that it would provide. From what testimony we have heard about the difficulty in getting an installment lending officer, it is probably as much [995] the expertise and the particular knowledge of being able to do this as it is the capital, although the two are sometimes hard to separate.

Q. Doctor, you heard the testimony yesterday of Mr. Thomas, the regional administrator of National Banks, that the establishment of the Denver holding companies in various markets in the State of Colorado would be something of a competitive plus. Have you had any occasion to address yourself to that question?

A. Yes, when I first began to study this case and think about the issues that were involved, I suggested that in general it was my experience that in areas—in small towns, banking was less aggressive, less competitive than in large cities throughout the country. I wanted to determine whether this was true in Colorado in specific. And at your request I made a survey of various communities throughout the state of Colorado to determine whether or not the general proposition that I had thought was true was in fact actually true in Colorado communities.

[996] Q. And how did you go about making that inquiry, Doctor?

A. Well, members of my staff and I visited towns around the state. I have a map in my briefcase, Mr. Metzger, which will indicate the number of interviews. These were essentially interviews of businessmen, though I did talk to banks

in most of these cities. I just put them on this map so that Your Honor can locate the cities, try to have a pretty good geographic cross-section.

There were 16 interviews in Fort Collins, going from north to south, five in Loveland, 12 in Greeley, four in Longmont, seven in Boulder, five in Northglenn, nine in Montbello, 30 in Denver, 10 in Colorado Springs, seven in Pueblo, four in LaJunta, six in Gunnison, five in Delta, 11 in Grand Junction, five in Rifle, and seven in Glenwood Springs.

Q. For a total, Doctor?

A. Somewhere over a hundred, Mr. Metzger. I don't have the total figure in front of me. I think it is on the map. Yes—I don't know where that is.

MR. METZGER: I will add up the numbers and see that we have them, Your Honor. They are in the records.

A. (Continued) Now, you asked me to describe the methodology behind this study. First of all, we talked to manufacturing firms, firms engaged in distribution, farmers, [997] retail store operators, larger department stores, public utilities, automobile dealers, realtors. We tried to get a cross-section of the business firms in the communities that we visited of bank customers. We asked them where their banking is done essentially, who solicits their business, what they consider their alternatives to be, what type of services they need from a bank, and what type of services banks offer them when they do solicit, what is the pitch, in other words, how aware are they to the competitiveness of banking, how does it affect them, do they feel they can do a lot of switching, do they feel they can do a lot of shopping around, was there any evidence of anti-competitive practices in these various communities, and from these types of questions and from this broad cross-section around the state I think I was able to draw some rather specific conclusions.

Q. And what are they, Doctor?

A. By and large, in the smaller communities around the state, there wasn't very much evidence of active solicitation, of really chasing after the business aggressively.

* * * * *

[999] THE COURT: I suppose that there is a tendency in a smaller community for one bank to specialize in farm and livestock and others to take on industry and others like the fringe banks in Greeley to make consumer loans and so on, isn't that right?

THE WITNESS: There is, Your Honor. This is one of——

THE COURT: The historical situation.

THE WITNESS: This is very much upheld, but sometimes the specialization is even less rational than that, if I may. You find that certain types—if there are two druggists in town, you will find one dealing with one bank and another dealing with another bank and very little evidence of the one bank trying to attract the business of the other. It is almost as if, "They have their customers, we have ours." This was very broadly stated by many of the people we interviewed on the types of questions which I have [1000] described. If a customer is disgruntled with his bank, then he might switch, but I saw very little evidence of any initiative on the part of the bankers to induce such switching. Part of it would be due to specialization in types of accounts, but I really think it goes much deeper than that.

Q. Doctor, how about your analysis in the larger cities in the state?

A. Well, I think Denver specifically was quite different, no evidence at all from Denver interviews of any reluctance to call on other people's customers, and I know of the business development program of the First National Bank of Denver. I have seen lists of the customers they call upon regularly and frequently, and they are out trying to get business.

Denver is a more competitive banking environment in precisely that sense. You look at solicitations, you look at the resources of the institutions as being devoted to getting the other fellow's customer and going after new business that comes into the area, and I think that the situation in Denver is very, very different from elsewhere in the state.

Q. Well, then, Doctor, would it be your judgment that the prospects, the thin prospect, I might suggest, of parallel policies by Denver banks is outweighed by the distinct differences in the quality of competition you found [1001] existing between banks in the outlying areas and banks in Denver?

A. I think that the situation here is far more competitive than in the outlying areas and I could find no evidence in the work that I did of parallel policies in Denver.

Q. All right, Doctor. Turning to a new subject and addressing ourselves to the concept of Weld County as a boom area, I ask you to examine, if you would, Defendant's Exhibit Numbers 4, 5, 6 and 7.

THE COURT: Let me ask, before we get to that, did the entry of these other holding companies in the Greeley area —did that step up the tempo any or do they still have a more or less passive approach?

THE WITNESS: Well, I found, Your Honor, the entry of the ABC organization, it is really too early to draw any conclusions from this. It was just a year ago and most of these surveys were conducted several months ago, so I do not think there is any experience there, really. The United Bank in Greeley has not—things have not really changed significantly or noticeably from my inquiries, and I was interested in this question and explored it, and in conversations with senior officials at United I learned that it has been their policy to this time not to significantly change things in the banks that they acquire and let them operate [1002] very much independently. Indeed, that was the experience. This is what people said in Greeley, and I wanted to check this out and investigate it, and this indeed has been their policy.

THE COURT: So that it hasn't really kept up, stepped up the temp any?

THE WITNESS: Not noticeably in terms of the past acquisitions for Greeley, Your Honor.

Q. And that derives out of a specific corporate policy?

A. That's correct.

Q. And to your knowledge is that the policy of the First National Bancorporation?

A. To my knowledge, the policy that the First National Bancorporation has expressed is the opposite, that as Mr. Brown testified, Mr. Ted Brown testified yesterday, they would intend to compete as aggressively and actively in Greeley or in other cities as they would or they do in Denver today. Their policy would be to have a much more influence on the activities of their local banks in terms of their competitiveness. Insofar as this policy would be carried out, it would be my assumption that it will induce the other firms in the market to respond in kind and this would then bring to the community the competitive advantages which customers in Denver now enjoy.

[1003] Q. Addressing ourselves to the question of Weld County as a boom area, Doctor, I ask you to look at Defendant's Exhibits Numbers 4, 5, 6 and 7, which are population statistics, and ask you to——

THE COURT: Let me get to this one more time. It kind of fascinates me. You think there is some historical impediments to their competing hard, based on personalities and so on?

THE WITNESS: I think——

THE COURT: Interrelationships?

THE WITNESS: I think there is a bit of this, Your Honor.

THE COURT: Did you run into this kind of thing?

THE WITNESS: Yes, I did. I would say that it is not a question of active collusion, because this was not obvious. Oh, you occasionally hear a story about such an activity, but basically this was not a significant factor, but many people would say, and this is something that buttressed my judgment from other banking markets, that is it not really —I think I can use in quotation marks the word "ethical" for a banker to go out after the other fellow's business. Try to do a good job and you will get your share of the business. This is, I think, an underlying philosophy in many smaller communities.

THE COURT: And so then a new officer or new officer [1004] staff would hesitate to get too aggressive? They might not last long.

THE WITNESS: There might be such a tendency. Of course, many of these banks have been controlled through families and in the smaller towns there is not always that much infusion of new blood from outside the area, who had worked outside the area. There was one example in one town of a banker that had worked in California and when entering this particular community I think he did compete more aggressively than the general rule and very differently and had a regular trial program such as had been done in California.

Now, in this particular instance, it was unusual circumstances that brought him back to Colorado where he had been raised and ordinarily it might not be possible for a small bank in such a town to attract that type of talent. At least, this was my general experience.

Q. Was he able to raise the market share of that bank?

A. Well, he has just been in very recently and they seem to be competing effectively, yes, very effectively.

Q. So a new management staff can compete aggressively in your judgment and succeed without ruffling too many feathers, citizen feathers, that is?

A. I think so, yes.

Q. Turning to the question of population growth, [1005] Doctor, Tables 4, 5, 6 and 7, could you tell us whether in your judgment Weld County is growing at an unusually rapid pace?

A. Well, first of all, Table 4 shows the rate of growth of Colorado compared to the nation as a whole. Colorado as a state has been growing more rapidly than the nation as a whole. Table 5 breaks down the growth in Colorado by county, separates out those counties on the Rocky Mountain front from Denver, and in turn from the remainder of the state, and if you turn to the second page of that exhibit, there are some percentage rates of growth.

The Rocky Mountian front counties—I should suggest what they are, Boulder, Larimer, Pueblo and Weld and El Paso, where the county seats are in turn Boulder, Colorado Springs, Fort Collins, Pueblo and Greeley—and three Denver suburban counties have really had the lion's share of the growth in the state. The remainder of the state, excluding Denver, in the period 1940 to 1970, actually lost population and gained only two percent if we look at the last ten years. The Rocky Mountain front counties as a whole grew over the 30-year period 260 percent, whereas the state grew only 96 percent. During that period of time, also, Denver grew 60 percent. If we look specifically at Weld County, it had a rate of growth of only 40 percent, lower than Denver, and only one-sixth as great as all of Rocky Mountain [1006] front counties, which included Weld, and in fact only about 40 percent of the state's growth rate during that period.

Now, one might argue that a 30-year trend is important, but must also be viewed in light of the more recent experience, what's happened in the last ten years, if things that would change this specific trend, and indeed the growth rate in the state has slowed down somewhat. The growth rate in the Rocky Mountain front is now twice the state's growth rate. The Weld County growth is less than half of that of the Rocky Mountain front, so it is not quite as strikingly different as it was over the 30-year trend, but even if we look at the last ten, it has grown at a rate slightly slower than the state and half the rate of growth in this area we have been talking about known as the Rocky Mountain front.

Denver and the remainder of the state, of course, have grown quite slowly.

I think that puts Weld County in the context of the growth rate that one might observe.

* * * * *

[1009] THE COURT: But I don't suppose that any new bank would have a chance at becoming a big competitor anyhow, because the patterns are pretty well set up there.

MR. METZGER: The experience in Aurora I think we just mentioned, Your Honor.

THE WITNESS: Yes, I agree.

THE COURT: In other words, it is doomed to a little bank regardless, you know. It's just one of those things. And, I suppose that would be true wherever it went.

THE WITNESS: Well, it takes a substantial amount of time——

THE COURT: Because you said even the United affiliate up there hasn't made too much of a splash.

THE WITNESS: That is right.

THE COURT: So the days when a little bank can open up and become a big bank in a period of time just are past, that's all.

THE WITNESS: I think that depends, Your Honor, on the area we are talking about. Given the absolute growth of the area, I don't think there is any——

THE COURT: Well, this is a fairly stable community we're talking about here.

THE WITNESS: Precisely.

THE COURT: It's not going to have an economy that——

THE WITNESS: Precisely. There are counties in [1010] Florida and in Southern California where a new bank can really become a large one very quickly. It depends on the economy.

THE COURT: Well, I suppose if you have a real boom in a brand new place, then—— But in a community like this, why, as I say, a new bank is going to be limited and restricted throughout its existence.

THE WITNESS: Precisely.

THE COURT: It's not going to go too far anyway.

THE WITNESS: Precisely. And I am concerned from an economic point of view whether a new bank could compete effectively, that is, whether existing banks could prevent the entry of a new bank, and I think I have commented on

that. And I am also concerned with whether a new bank can effectively serve the community, to—whether it could get big enough to effectively serve the community, and this is one of the things that I would like to address myself to when we get to the issue of potential entrants. Precisely this point. How fast can a new bank get to the point where it could do something.

* * * * *

[1012] Q. Doctor, during the intermission, did you have an opportunity to total the number of interviews you made in your survey?

A. 143 interviews in 16 cities.

Q. To return to your analysis of Defendants' Exhibit Number 6, Doctor, population of population centers in Colorado by size category, 1940-1970——

A. Yes, of the 13 cities, 25,000 or larger, in population growth from 1940 to 1970, Greeley ranked Number 11, ahead only of Pueblo and Denver. In absolute growth—that was in percentage growth, but in absolute growth, Greeley was actually the lowest ranking, Number 13. For the years 1960 to '70, the last decade, it was 11th in absolute growth and 10th in relative growth.

Q. Turning, Doctor, to Defendants' Exhibit Number 7, how is this relevant to the question of the growth of Greeley?

A. Number 7, Exhibit 7, shows the growth of student body and faculty at Northern Colorado University and indicates that the university now has some 10,547 registered students, so there has been a growth since about 1940 of [1013] about 9,000 students, of the total population growth of 23,000. Since these students are counted in the population for the area, one could look into the fact that they are constantly turning over and, although there will always be a student body as long as the enrollment keeps up or increases, one could argue, as I think was pointed out earlier, that their banking needs would not be quite the same as other segments of the population.

[1014] Q. Doctor, given two communities with 30,000 people, one of them with 10,000 students in attendance, and one without that student body, what would you expect of the banking characteristics of that market?

A. I would expect that the——

Q. Those markets.

A. ——that the market with the student population would

have other things equal, less of a need for banking facility. And, other things equal, a lower deposit base.

Q. Given the character of this growth, Doctor, how would you evaluate the likelihood of new entry into this market?

A. Well, from the growth alone, from the factors of growth alone, which I would characterize as moderate—modest growth, a reasonable healthy economy, I would look toward the banking structure in the area to arrive at a determination of whether new entry was an attractive possibility.

Q. What is the best proxy for analyzing that character of the banking market?

A. Well, a very good proxy is the population per bank, a very good proxy for the structure of banking in the area.

Q. Turning your attention to Defendants' Exhibit Nos. 40 and 41, how do these bear upon that evaluation?

A. 40 showed population per banking office in all Colorado counties with 50,000 or more people. Weld County was [1015] at the bottom of the list. It had less than two-thirds of the population per banking office than did Larimer County which was next to the last on the list. If one examines the City of Greeley on the next table, 41, it was next to last. Its population per banking office of 6,484 was lower than all cities of 15,000 or more with the exception of Loveland.

Q. Doctor, how attractive would you conclude that the prospect of a de novo bank in Weld County would be?

A. I would conclude that Weld County would be the least likely or almost the least likely place for a de novo bank in the State of Colorado.

Q. But what of the documents that the plaintiff has placed in evidence here about the growth of water meters, telephones, et cetera?

A. Well, I think these economic factors are interesting but very highly correlated with population. And if one were to do a statistical study, population would explain pretty much the growth of the area. Because, it is so highly correlated with these other factors that some will go up a little faster than others. But I think the basic notions of population—we have a moderately growing area together with the number of banking institutions already in the market would lead me to believe that by most benchmarks and most standards new entry is not very likely or attractive.

Q. What factors would you take into consideration, [1016] Doctor, if you were evaluating the prospect of a new charter being granted by the bank regulatory agencies?

A. Well, I would certainly take into account the factors that I have already considered, namely, the economy—the nature of the economy, the banking structure. In this case population per bank measures and per banking office, and of course I would take into account the philosophy of the bank chartering authorities as best we could determine that. I listened to Mr. Thomas's testimony yesterday and from what he said I feel that the information given these statistics, that the national banking authorities would not be at the present time favorable toward a new charter. And then, one would try to inquire into the state which is the other alternative, the State Banking authorities inclination in that area.

Now, since 1960 the national bank—national banks—48 national banks were chartered as compared to 16 state banks. This may imply somewhat a more liberal approach from national bank authorities than from the state bank authorities.

We also have some specific evidence in terms of what the state banking authorities have done elsewhere that might shed some light on what their inclination might be here in Greeley.

[1017] MR. SCHOEPKE: I would object to that answer. I really don't think that what the banking agency might have done in one town is particularly relevant to what they might do in another town.

Q. Doctor, do you think that what the bank regulatory agency will do in one town could be particularly relevant to what it has done in another town?

A. Yes, I do.

Q. And why is that?

A. The regulatory authorities look at certain criteria in trying to arrive at a decision and recommendation. Many of these criteria that are part of every application for a charter are specific to local economy, concern population and growth rates and general economic activity, and they concern the banking structure, the number of banks in the community, whether they have been successful, so on. Certainly, there might be specific factors to any individual application, such as is the management qualified or are

there any peculiarities, but nonetheless I would say that one could arrive at a pretty good judgment based on what they have done in the past as to what they might likely do in any given situation.

Q. Do you have any——

THE COURT: Hold up. What I am curious about is, you said you would analyze the philosophy of the authorities [1018] involved. You don't mean to say that these charters are granted upon or denied upon the basis of whether their basic philosophy is that of unit banking or branch banking or something of this sort? Is that what you are talking about?

THE WITNESS: No, Your Honor, I wouldn't say that it would be. Perhaps philosophy was not as accurate a word as what their attitude is, given certain economic facts and certain statistical information about banking in the area that they have in front of them when evaluating this type of application, and so when I look to past decisions I look to how they reacted in a certain circumstance and I term this an attitude or a propensity as to how they might react, how they might reasonably be expected to act in a situation at hand.

Q. Do you have any close proximation to the Greeley situation in mind, Doctor?

A. Well, there were two applications in Boulder for a new charter. One was in February, 1970, and then just in January of 1971, another. Both were turned down. I believe that the decisions are in Defendants' Exhibits 42 and 43.

Now, to compare Boulder County or the City of Boulder with Weld County or the City of Greeley, one finds that Boulder is a much more rapidly growing area. For example, in 1940, Boulder was actually smaller than Greeley as cities. The counties have grown in the last 30 years. [1019] Boulder County went from 37,000 people to 131,000, Weld County from 63,000 to 89,000. In the last ten years, Boulder County went from 74,000 to 131. Weld County from 72,000 to 89,000. So, although Greeley has grown, Boulder is much more of a growth area.

In terms of population per bank in Weld County, it is 5,953 people. In Boulder County, it is 10,991, so we are really again comparing a situation where relative to Weld

County one would say that Boulder County would be rather attractive.

Q. And the number of banking offices in each community, Doctor?

A. Is identical, and, therefore, one would conclude that the turndowns in Boulder might likely, given these economic facts, lead to turndowns in Greeley.

Q. Turning your attention, Doctor, to the question of direct competition, I believe it was testified during the plaintiff's case that while the banks were not in direct and substantial actual competition, one with the other, and that the First National Bank of Greeley had no substantial competition in Denver, but, nevertheless, the First National Bank of Denver had some loan overlap in Weld County which would justify a conclusion that the First National Bank of Denver was, quote, on the edge of the Weld County market.

Doctor, have you evaluated the loan and deposit [1020] overlap figure for these two banks?

A. Yes.

Q. What is your judgment with regard to specifically the lending overlap of the First National Bank of Denver into Weld County? Do you believe that this demonstrates that the two banks are in substantial competition directly, one with the other?

A. No, I do not. The loans that the First National Bank of Denver makes in Weld County, some $7 million worth, are almost exclusively loans either to customers which are too big to be handled by the Greeley banks and so they are in a much broader market, these customers are in a much broader market, or they represent—and/or they represent assistance by the First National Bank of Denver to the Greeley banks in terms of their overlines or participations with the Greeley banks beyond—for loans which are beyond the lending capacity of those Greeley banks.

Q. And do you, therefore, conclude, Doctor, that these loans indicate competition between the banks in Greeley and the First National Bank of Denver?

A. Quite the opposite. I would say they indicate assistance by the First National Bank of Denver to the Greeley banks to handle these larger customers.

Q. And your conclusion with regard to direct competition generally?

[1021] A. My conclusion is that there isn't any direct competition between the two banks. The First National of Greeley has no business in Denver to talk about. There is no significant First National Bank of Denver business in Greeley, so there is no real deposit overlap, and the loan figures—I think I explained their significance to me.

Q. Doctor, turning to the question of section of the country, the appropriate section of the country within which to evaluate the competitive effects of this acquisition, taking an actual competition case——

THE COURT: Before we leave that, I would like to ask something on that last subject, and that is whether these referrals to the First National Bank were all from the First National Bank of Greeley? You indicated they were not. Do you know?

THE WITNESS: No, I know that they have substantial overlines for Greeley National Bank also.

THE COURT: Oh?

THE WITNESS: I don't know whether there is any significant referrals from the United Bank in Denver. I don't think there is very much in that direction, but from Greeley National as well as from the First National Bank of Greeley I actually do not know which would be more, but I would say they would both be relatively equal.

[1022] THE COURT: But in any event you wouldn't say that—after analysis that this is—this business——

I think the testimony is that the First National of Denver has about $50 million of loans in Greeley or Weld County? Is that what you found out?

THE WITNESS: I thought the figure was $7 million.

MR. METZGER: In Weld County.

THE COURT: Weld County?

MR. METZGER: Yes, sir. Six million five hundred thousand of which is represented by thirteen loans, averaging $500,000 apiece. These are answers to interrogatories.

THE COURT: That's all there is?

THE WITNESS: That's correct.

THE COURT: And none of these are the result of any competition according to your analysis?

THE WITNESS: According to my analysis these are large loans that represent overlines, originated by the Greeley banks.

THE COURT: They are all in a sense referrals, is that

right? They were initiated at either the Greeley National or the First National of Greeley?

THE WITNESS: I believe from those two banks. I'm not certain whether any of the other banks had initiated——

Q. (By Mr. Metzger) Are there any direct loans involved in these figures, Doctor?

[1023] A. I believe one or two of them represent large customers who deal with the First National Bank in Denver to which there are direct loans as opposed to overlines.

Q. I don't think there is any secret about one of those, Doctor. Is there one national credit in Greeley?

A. Well, Monfort, I'm sure one of those loans is a Monfort item.

Q. And can the First National Bank of Denver handle that credit?

A. No. It's something that is participated in Chicago and elsewhere. It's much larger than the First National Bank of Denver lending limits, and it's really a national loan. It could be originated in New York or Chicago or San Francisco as easily as anywhere else.

Q. Turning, Doctor, to the question of the section of the country, could you tell us what is the appropriate section of the country for measuring the effect of a proposed affiliation where the parties are in actual competition?

A. Well, in actual competition it would be the area of competitive overlap.

Q. And in the case of potential competition?

A. We are here concerned with the market area or the trade area of the First National Bank of Greeley, because the issue in the potential competition case is what is the likelihood that the First National Bank of Denver or the First National [1024] Bancorporation would compete directly with the First National Bank of Greeley in its area rather than the First National Bank of Greeley competing in the Denver area. So in this case we would want to determine as a relevant section of the country what the market area of the First National of Greeley is.

Q. And how do you determine what the market area of the First National of Greeley might be?

A. Well, I am interested in such questions as where they compete effectively; where they are a substantial and important factor in the market.

THE COURT: Which? The First National of Greeley?

THE WITNESS: The First of Greeley, yes, because in determining their market area one wants to look at their deposits and loan distribution, where their loans and deposits are drawn from. But, we also want to look at where they are an important factor in the market. And where other banks consider them to be very effective competitors.

Q. What proportion of the deposits and loans of Weld County are controlled by the Greeley banks, Doctor?

A. It's better than 80 percent. I have a table somewhere but it is better than 80 percent.

Q. How would you determine where the First National of Greeley is an effective competitor?

A. Well, Greeley is really the focus for all of Weld County. It's the commercial center, the retail center for [1025] Weld County. One would look and see what proportion of the business outside of Greeley and the so-called Greeley area is being performed by the Greeley banks.

One would also then look at where the Greeley banks draw their business from and I have conducted both of these analyses.

Q. Turning to Defendant's Exhibit No. 44, Doctor, is this an analysis of the deposit and loan scatter of the First National Bank of Greeley drawn from answers to interrogatories?

A. Yes.

Q. What does it show with relation to the First National Bank of Greeley's penetration into Weld County markets?

A. It shows that in deposits they draw approximately 70 percent from inside the city, somewhat under, and an additional ten percent from outside the city, but, in the so-called Greeley area. And another ten percent plus depending on the category from elsewhere in Weld County. Their total deposit business in Weld County is just under 90 percent, depending on the category.

In the lending area, the figures are somewhat lower for the City of Greeley. Total loans there at 57 percent, in the city of Greeley, and another 16 percent outside the city but in the Greeley area. And another 11 percent outside the Greeley area but in Weld County. And, leaving a total lending [1026] activity in Weld County of 83.4 percent.

Q. Assuming, Doctor, that the Weld County proportion of deposits of the First National Bank of Greeley were to be carried out by its competitors in Greeley, what impact

would those banks have upon lending activities in the rest of the Weld County area?

A. They would—the analysis that we have done indicates that Greeley banks have approximately 40 to 50 percent of the lending business outside of the Greeley area but in the rest of Weld County.

Q. Would you say that this was an area then in which there were effective competitors if these statistics held up?

A. Yes, I would. And that incidentally was supported by my interpretation of the testimony of several bankers in Weld County who said that the Greeley banks did compete effectively in their communities.

Q. What of the testimony of Mr. Dean from United Banks of Greeley yesterday, Doctor, where he testified that most of his business came from the City of Greeley. And, you would assume from that the City of Greeley was his market?

A. Yes. Mr. Dean also testified that he believed from the time that the United Banks made application to acquire the Weld County Bank that there had been little change in the structure or the origin of his deposits and loans. From the application of the acquisition of Weld County Bank the following [1027] figures suggest that the United Bank actually had more of its business in parts of Weld County other than the Greeley area than does the First National Bank of Greeley.

For example, the bank had 75 percent of its deposit business in the Greeley area and 18 percent in the county outside of the Greely area. 93 percent total Weld County. For loans the figures were 57 percent for the City of Greeley, identical to the First National's. Twelve percent outside the city but in the Greeley area, and 22 percent elsewhere in Weld County. That 22 percent was twice the figure for the First National Bank of Greeley elsewhere in the county. Total loans in the county represented 91 percent of their lending activity.

* * * * *

[1028] Q. (By Mr. Metzger) Do these numbers, Doctor, tend to confirm or reject the thesis advanced of the deposit scatter of the First National Bank of Greeley?

[1029] A. Well, they tend to confirm it. If anything, they tend to make even more important the remainder of Weld County.

THE COURT: You're saying that Weld County is the relevant market area then?

THE WITNESS: Yes, Your Honor.

THE COURT: Even though Greeley and this group of towns that the government relies on is the—this cluster is the heart of the——

THE WITNESS: Well, the proportion of deposit business in Greeley for example is comparable to the proportion of business that the Phillipsburg National Bank and the Second National Bank had in the City of Phillipsburg and its environs and yet the Supreme Court held that the City of Easton and its environs was also part of the relevant geographic market in which to judge the effects of that merger, whereas, Easton added approximately 10 percent to the portion of the deposits drawn from that area.

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[1030] THE COURT: Well, there is no bank in the county that is capable of competing with the First National of Greeley, is there? I mean, other than the Greeley National and the United Bank?

[1031] THE WITNESS: Well, there are 15 banks in Weld County.

MR. METZGER: Yes.

THE COURT: Yes.

THE WITNESS: Some of them are quite small.

THE COURT: That's whatI mean.

THE WITNESS: For certain types of business, they compete quite well with the First National of Greeley. It is by comparison, looking at the resources of the First Nation Bank of Greeley for larger agricultural loans where some specialization is important, obviously, the small banks might not be able to be as effective, but for demand deposits and for consumer loans I am sure they are very effective. They have maintained themselves and are financially viable and I think that they are relevant as part of this market.

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[1032] Q. Doctor, turning your attention to the question of the line of commerce within which to measure the competitive effects of this proposed acquisition, can you tell us what a line of commerce is, Doctor?

A. A line of commerce or a product market is a series or group of products for which the firms compete. It is

the area of competition in terms of the services that are being sold.

Q. The heart of the concept that commercial banking is a line of commerce is that the demand deposit being unique substantially immunizes the remaining products sold by commercial banks from competition by other offerers. Would [1033] you care to comment upon that proposition, Doctor?

MR. SCHOEPKE: Your Honor, may I have a standing objection to the line of questioning which I gather is going to follow? As Mr. Metzger himself has pointed out in his brief, the Supreme Court has three times held that commercial banking is the appropriate line of commerce within which to consider and measure and analyze the competitive effects of mergers and consolidations and acquisitions between commercial banks. We thing this is now a rather established thing, but I gather from Mr. Metzger's brief that, despite the fact he admits the Supreme Court has held commercial banking is the appropriate line of commerce, he wishes to go through it all over again.

I would like a standing objection to the testimony which I assume is coming now that there are savings and loan associations and insurance companies and finance companies and all of these other organizations that deal in money that are also a part of the line of commerce. I think this is established as a matter of law that commercial banking is a unique animal and that is what is to be used in measuring mergers and consolidations of commercial banks, and, therefore, it is unnecessary for us to go through it all over again in this case, and so I would like a standing objection to this line of testimony, if I may.

THE COURT: We will extend to you a sitting [1034] objection.

MR. SCHOEPKE: Thank you, Your Honor.

THE COURT: But I think it is true that the Supreme Court has held that this is an appropriate line of commerce.

MR. METZGER: On the factual records before it, Your Honor, and five District Court with the factual records before them found that the factual records before the Supreme Court were wholly inadequate. I don't propose to——

THE COURT: Of course, I am——

MR. METZGER: —to treat this extensively, Your Honor.

THE COURT: Of course, I gravitate towards the District Courts, as you know, but in the final analysis I think I have to follow the Supreme Court.

MR. METZGER: I understand. and I have the same problem, Your Honor, but I just want to make a very short factual record on this point.

THE COURT: All right.

Q. Doctor?

A. Well, I believe that the line of commerce should be evaluated with respect to the specific services that are offered. If we are looking at demand deposits, then I would believe and agree that commercial banking is a relevant line of commerce. I do not feel that the commercial—that demand deposits give commercial banks such an [1035] advantage in the sale of other products that this should be broadened. If we are interested in the market for real estate loans or whatever, the line of commerce should be extended significantly. Nonetheless, Your Honor, in light of the Supreme Court decisions I have made all the analysis in terms of the conclusions that I draw on the competitive effect of this acquisition on the basis of an assumed line of commerce as commercial banking.

Just as the particular choice of the section of the country, be it Weld County, which I think is accurate, or be it Greeley or Greeley area, does not affect the ultimate competitive decisions I draw.

Similarly, whether the line of commerce is defined as commercial banking or is something broader, my conclusions are based on the narrower line of commerce. To very briefly discuss this issue, I would really like to mention just several tables, several defendants' exhibits, and what they indicate.

THE COURT: Well, if commercial banking is not a line of commerce, why, what would be the line of commerce in this area?

THE WITNESS: Well——

THE COURT: Or are banks immune from prosecution under this Section 7?

THE WITNESS: Oh, no, absolutely not.

[1036] THE COURT: Well, what is the appropriate line of commerce in the banking situation?

THE WITNESS: I believe that the appropriate line of commerce should be extended to include savings and loan associations, for example, in the market for savings de-

posits and in the market for real estate mortgages. I believe that the finance companies have to be considered in the markets for individual lending. I believe that when it comes to farm lending, one has to look at the activities of the Federal Farm Credit agencies, which extend these loans and do compete quite effectively with commercial banks in these areas.

THE COURT: You say all lending agencies, big, small, medium?

THE WITNESS: I would look at the competition—in talking about market shares——

THE COURT: Investment bankers, too?

THE WITNESS: Well, from many activities I would not include investment bankers, but if one were—if one were looking at certain types of services offered, then investment bankers might be competitive, but I would not see that being very direct.

Q. Doctor, would it be fair to say you are unbundling the congeries of services discussed?

A. Yes, I am.

[1037] Q. And you would find separate lines of commerce for each?

A. Yes, I would.

Q. And what if you found a violation of a substantially anti-competitive effect in demand deposits? Need you look further?

A. If that were found in demand deposits for the demand deposit function, then I would not look further, because no other institutions compete in demand deposits, and the acquisition or merger would be—if it were substantially anti-competitive in demand deposits, then I would judge that merger to be illegal or anti-competitive.

Q. Let us suppose we were contending for anti-competitive effect in mortgage lending. Would you feel impelled to limit your inquiry to banks as mortgage lenders?

A. I would feel compelled to extend my analysis to see what insurance companies were doing in the market, what savings and loan associations were doing in the market and so on, beccause if commercial banks hold 20 or 30 or 40 percent of a given market, then for that particular line of product, real estate loans, it would not be possible to assess a competitive effect without looking and seeing what the other firms were doing in that market.

In some areas in which commercial banks compete, they

are by no means the largest offerers, but in any of these [1038] products a substantially anti-competitive violation judged in terms of that product market would be sufficient.

THE COURT: Yes, but the net result of this thinking would be to greatly liberalize the realm and scope of activity where in relationship to this law it would be virtually impossible to prosecute anybody. Maybe it is now.

MR. METZGER: Not necessarily, Your Honor. You could make an inquiry into demand deposits. Counsel could say, "Look, demand deposits is an important function of the commercial bank. The populace of this area would be adversely affected if 25 percent and 20 percent got together and controlled 45 percent of the demand deposits." And, according to the numbers game the Supreme Court has been playing so far, we would probably be out of court without more.

Our objection on line of commerce has always been a suggestion that there is something unique about demand deposits which makes the savings deposit function of a commercial bank immunized from competition of other offerers of those services, and you may look at the effect in savings deposits as if there were no other offerers of that service.

If the government were to seek out and find a particular line of the 20 or 30 lines involved that was substantial and found an adverse effect, they need not even look at any of the others. Our complaint is bundling them together where there is no factual justification for the [1039] bundling, and if we may proceed on this question as to the savings and loans and credit unions and mutual savings banks as to which the Court specifically addressed itself I think we can show that the evidence in the very market to which they were concerned shows that there is a very, very close relationship between changes in rates in savings and loans and changes in rates in commercial banks and there are enormous shifts in deposits between the two organizations based upon very minor changes in their rates, which is by the Supreme Court's criteria in Cellophane the basis for determining what products are in the same market and, by the very criteria established by Mr. Justice Brennan in PNB, these are the factors he considers in arriving at the conclusion that savings and loans were immunized from the competition of commercial banks.

We will show that factually this is not so but the theory applied would break down the so-called congeries of services for commercial banks.

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[1040] Defendants' Exhibit 55 shows commercial banks relative to other pass book savings institutions, namely, mutual savings banks, savings and loan associations and credit unions, what decline they experienced in their market share. It dropped off from 46 percent in 1940 to 35 percent in 1969 of the total of all these institutions. I should add——

Q. Doctor?

A. Yes.

Q. Would you take another look at the last line and the third from the last line?

A. I am sorry, I was talking about the 100 largest. Commercial banks as a percent dropped off from 81 percent in [1041] 1940 to 67 percent in 1969.

I should point out that comparing 1965 and 1969, that trend was slightly reversed due to the fact that in the last few years commercial banks became much more competitive and were allowed to go out after time money with higher interest rates, and in so doing did in fact increase their market share, implying that consumers are sensitive to these price differentials in deciding which institution to use, which is a measure of substitutability criterion in Cellophane, which Mr. Metzger alluded to a minute ago.

Now, Exhibit 56 simply shows that commercial banks have just over 40 percent of the market in consumer instalment credit outstanding, competing here with finance companies and credit unions and retail outlets and other lenders.

Exhibit 57 shows the growth of credit unions in the United States from 1960 to 1969, which has been quite substantial, much higher relative importance.

Defendants' Exhibit 58 shows that when one looks at the assets of financial and nonfinancial institutions, the share held by commercial banks has declined from 14.8 percent in 1950 to 11.4 percent in—to 11.6 percent in 1968.

Looking at Exhibit 59, farm lending shows of the many suppliers of farm lending in the United States, commercial banks have under a quarter of that market, merchants,

dealers, finance companies, various federal credit programs, which I [1042] mentioned.

Now, turning to Exhibit 60, which looks at new savings withdrawals and net inflow into Federal Savings and Loan Insurance Corporation, insured savings and loan associations, in the Philadelphia metropolitan area, 1963 to 1968, this being a market which of course was relevant in PNB and then again in Providence, the statistics show that the net inflow was rather steady into savings and loans except for the year 1966 where the actual inflow was less than 10 percent of what it was in surrounding years, and this was due to the fact that in the early part of that year the commercial banks were allowed by a change in Federal Reserve regulations to offer rates which were effectively higher than the rates offered by savings and loan associations, and you notice that very sharp shift. Then toward the end of the year the Federal Home Loan Bank boards authorized the savings and loan associations to raise their rates and also the Fed made it more difficult by first cutting to $100,000 minimum, only over $100,000 time deposits could bear the higher rate of interest, so effectively commercial bank rates were lowered and the flow was immediately reversed.

Q. Doctor, what was the spread here? What are we talking about? A point?

A. We are talking about a quarter of a point, in fact, five and a half versus five and a quarter.

[1043] Q. So a quarter of a point difference created a substantial diminution of the net inflow to savings and loans?

A. Yes, sir.

Q. And a reversal of that quarter of a point difference occasioned what?

A. Indicated that the flow went back in the other direction, so consumers were very sensitive in this very metropolitan area, which was under consideration by the courts in terms of the savings account function.

The savings and loan competition should not be ignored in evaluating any competitive effects for that particular function.

Q. Does Table 61 support the same conclusion, Doctor?

A. Yes, for mutual savings banks it shows in the same year a very substantial drop in deposits, a drop in deposits of $83 million in 1966, whereas in every other year deposit

growth was very substantial. In 1965, their deposits grew over a hundred million. In 1967 they grew by 70 million. In 1966, however, they dropped to this degree through the competitive ability of the commercial banks through a boost in their rates to attract the time money.

Q. Turning to Defendants' Exhibit Number 66, Doctor, which concludes this inquiry.

A. Mortgage loans in Weld County, all commercial banks [1044] sold only 31.7 percent of the mortgage loans in Weld County, the rest being held by savings and loans, insurance companies and so on, listed, so non-banks are twice as big as banks in mortgage lending in Weld County.

Q. What conclusions do you draw with respect to the appropriate line of commerce within which to inquire as to the competitive effects of this proposed affiliation, Doctor?

A. I draw the conclusion that there are many appropriate lines of commerce, depending upon the particular service that we are looking at, and that the demand deposit function itself does not make commercial banks immune to competition for other products which they offer, and nonetheless, as I have already stated, I have done my analysis of this case based on the assumption of a commercial banking line of commerce. I have drawn all my conclusions about competition from that assumption.

[1045] Q. Thank you, Doctor. I'd like to turn the subject now to correspondent banking.

Will you tell us, Doctor, what is correspondent banking?

A. Correspondent banking is a—really a set of transactions between banks. It's a dealing of one bank with another bank. It is a service as provided by some banks and received by other banks. It's the methods whereby some commercial banks offer services to other commercial banks.

Q. Is this method of service distribution one which serves the interest of competition?

A. Well, my judgment is that correspondent banking is necessitated by the inability of larger banks located in large metropolitan areas to get into outlying communities either through branches or acquisitions and the need for the services that only these larger institutions can perform to be provided in these outlying communities such as the larger loans that they—that we were talking about, the overlines. The need for various money market type transactions that have a direct relationship with the Federal Reserve Bank.

And, because of this correspondent banking relationships have sprung up so that the larger banks can operate, can help the smaller banks in outlying cities perform some of the functions which the smaller banks cannot perform for themselves.

[1046] Now, you asked me whether this is a competitive device or structure. And basically I would say that the correspondent banking system is anticompetitive in that when one bank has these correspondent relationships with other banks it becomes difficult and is not a common practice for the big city banks to compete effectively with their correspondents.

After all, they are customers, and direct competition with your customers insofar as it might be feasible which it would not be for the broad variety of the services, but still where it might be feasible, would not be something that would likely take place and is something that does not likely take place.

Q. Would the development of substantial branch or holding company subsidiary systems have an affirmative impact of competitive vigor?

A. Yes, I think that the—insofar as correspondent banking goes, we would be replacing a correspondent relationship with an owner relationship where there would be objective and aggressive means for the larger city institutions to compete effectively in communities around the state in which they were located—the state in which they were branching.

Q. Are there economies of scale which these banking organizations could obtain in operating these—operating in these communities?

A. Yes, I think there are.

[1047] Q. Could you support that conclusion?

A. Well, larger banking organizations—it can be demonstrated from various studies that have been done—do enjoy lower unit costs of operation. If one looks at economy of scale as being the unit cost of producing a given output, the larger banking organizations with branch banking facilities or holding companies could take advantage of these lower unit operating costs and would pass on these advantages—competition would induce them, indeed, force them to pass on these advantages and these cost savings that they achieve to the customers in outlying areas.

Q. You refer to some studies, Doctor.

A. Yes. There have been several studies, for example, on the effectiveness of unit versus branch banking systems in terms of performance.

MR. SCHOEPKE: Your Honor, I have to object again. This case is not about unit versus branch banking or holding company banking or anything. We're concerned with banking in Colorado.

MR. METZGER: Counsel has raised the question of the correspondent banking system, Your Honor. We are just trying to show that the kind of banking that we want in Colorado has the support of the economic community. We simply want to cite the two sources to that effect. I believe the scope of the plaintiff's case provides ample room for us to point out that [1048] we have something better to sell than what they want to inject into our competitive mixture in Colorado.

MR. SCHOEPKE: If Your Honor please, the banking system which a state wants to have, whether it be branch banking, unit banking, is a matter for the state legislature. We are concerned with the competitive implications of the particular method by which acquisitions under whatever system you have take place. That's the essence of our case, and this entire line of questioning about unit banking versus branch banking is simply so remote from this case that I don't believe counsel should be permitted to go into it.

MR. METZGER: Your Honor, if I thought Mr. Schoepke was serious I would be very happy to quit right there on this point. But he does allege vertical foreclosure which is a statewide impact which deals directly with the question of what kind of banking you're going to have in this state.

Counsel consistently through this trial has suggested we ought to consider the question of vertical foreclosure. But that we the defendants ought not be permitted to show that if you permit this vertical foreclosure argument, you're going to establish an anticompetitive method of banking. I think if he's going to argue the one, we have to argue the adverse.

THE COURT: Very well. Proceed.

We will note Mr. Schoepke's vigorous objection and we will finally determine that he is very serious in making [1049] the objection, too.

MR. SCHOEPKE: May I just add a very serious footnote,

Your Honor, that you're going to have foreclosure whether you buy a bank and make it a branch or whether you buy a bank and make it a subsidiary of a holding company.

MR. METZGER: And both are evil?

MR. SCHOEPKE: Depending upon the extent of the vertical foreclosure.

THE COURT: He says he's in favor of vertical foreclosure that takes this form of a new start in Greeley, isn't that right?

MR. METZGER: Yes.

MR. SCHOEPKE: I don't believe I heard Your Honor.

THE COURT: If they will just organize a new bank, why, you would not object to their going in there?

MR. SCHOEPKE: Oh, no, that's not vertical foreclosure. That's what has the blessing of the Supreme Court. That's de novo expansion. That's internal growth rather than a big fat cat that is already in there. That's our objection.

MR. METZGER: And both constitute vertical foreclosure.

Q. (By Mr. Metzger) Doctor, could you give us the name of the studies?

A. Well, let me say that there has been a good deal of work done on trying to appraise the performance of different [1050] banking structures and by performance we mean the interest rates on loans, the interest rates on time deposits. Higher rates on time deposits, lower rates on loans is better performance. The level of service charges; the quality of service; the loan-deposit ratio; higher loan-deposit ratio generally means you're offering a better service to the community.

Now, most economists I would say, including one of plaintiff's experts, Dr. Hall, have stated that there are competitive advantages to more liberal branching and holding company movements. These competitive advantages incorporating the economies of scale. I comment just on two studies, just two statistical studies, and several more could be discussed, and I won't discuss them in detail.

One was done for the Federal Reserve Bank of Richmond in which Charlotte, North Carolina, Richmond, Virginia, and Charleston, West Virginia, were analyzed. This was done in 1963 and as of 1962 these states were respectively statewide limited branching and unit banking states.

Virginia law changed, I believe, in 1962. And, looked at these metropolitan areas, found that the population per office was almost four times as high in Charleston, the unit banking state, as it was in Charlotte, and Richmond was in between. The loan-deposit ratio, again, the rank was Charlotte, Richmond and Charleston in descending order.

And based on these characteristics, these types of [1051] statistics, it was concluded that there was a difference in the competitive environment.

[1052] Another study I would just like to mention, done by Horvitz and Shull in the National Banking Review indicated again that when in towns over 7,500, when branch banks merged—when larger banks through branching systems merged with smaller banks, that the interest rates were generally lower after the merger; that services expanded somewhat and that higher loan asset ratios generally resulted. From all this I merely draw the conclusion without regards to the specific example necessarily that a policy that would have us through not allowing a holding company organization to develop, would have as its effect essentially freezing unit banking and there are many states that are now in this dilemma, that are now faced with changes in the banking structure through holding companies which are permissible and this type of regulation, if it succeeded, would freeze the unit banking system which most economists believe has poorer performance. This is the purpose of this inquiry, Your Honor.

Q. We have heard discussion from Mr. Schoepke quite recently regarding vertical foreclosure. Would you tell us what vertical foreclosure, both forward and backward vertical foreclosure may be, Doctor?

A. As I understand it, forward vertical foreclosure is where a supplier affiliates with one of its customers and thereby eliminates that customer from other suppliers of a service. Backward vertical foreclosure is where a buyer of a [1053] service affiliates with a supplier and eliminates that supplier from other buyers.

Q. Did we at one time have both backward and forward foreclosure in this case, Doctor?

A. Yes, we did. But, as I understand the plaintiff's case they have now eliminated the situation where other suppliers would be eliminated. They have eliminated the backward vertical foreclosure situation because of an inherent

contradiction in that if the First National Bank of Denver were eliminated as a seller of correspondent services by this acquisition, then that would imply that it was also eliminated as a de novo entrant because any market that had entered de novo, if indeed it then could not sell those firms in the market, it would similarly—the situation would be identical to entering through merger. So, the elimination of the First National Bank of Denver as a seller of correspondent services was tantamount to also eliminating the First National Bank of Denver as a de novo entry and in a potential competition case one is concerned with whether or not this bank would be a potential entrant.

Q. Would effect would a—would the adoption of forward vertical foreclosure arguments advanced here have upon the development of substantial alternatives to unit banking in this state and in other states similarly situate?

A. Well, it would imply that any significant buyer in [1054] the market could not be purchased or could not join a holding company because it would be eliminated as a buyer of correspondent services. If that were the case, it would have the effect of freezing a unit banking system throughout the state.

Q. Let us understand that exactly, Doctor. Are we suggesting that a certain level of alleged vertical foreclosure would be reached beyond which any vertical foreclosure would tend to substantially lessen competition?

A. No, I don't think so.

Q. I mean, is that the thrust of the government's case?

A. I would think that would happen a good deal in terms of what the government is saying.

Q. Let me put it to you in a different way. Let us assume that a certain number of banks took up 10 percent of the potential customers in terms of numbers or in terms of product, and at that point a suit was brought against another supplier because it was attempting to acquire another outlet and the thrust of the suit was this—was that this is a vertical foreclosure which forecloses other suppliers at an undue level. Would it matter on that theory, Doctor, whether that were a big company being acquired or a small company being acquired?

A. I think on that theory, Mr. Metzger, it would not matter. The level would have already been reached.

Q. So in this forward vertical integration argument, [1055] on its theory we would at a certain level, whatever

that level might be, stop substantial movement of holding company growth, is that correct?

A. On this theory we would, sir.

Q. Accepting that theory for the purposes of the next discussion, Doctor, is it your opinion that this affiliation would occasion a substantial vertical foreclosure of the competitors of the First National Bank of Denver in the offering of the correspondent services?

A. No, it would not.

Q. What is the amount of the dollar income to the First National Bank of Denver from this proposed affiliation?

A. Mr. Hogue testified to that figure. I believe it was $5,000.00 before taxes.

Q. Is this in any event a substantial vertical foreclosure?

A. No, it most certainly is not.

Q. Are you familiar with the term diminimus?

A. Yes.

Q. Do you believe this would be a de minimus foreclosure if foreclosure indeed it might be?

A. Yes.

Q. Doctor, let us assume the market alleged by the government—that we are talking only about six Denver suppliers of commercial banking services, and—correspondent [1056] banking services. And, let us assume that we are also talking about only Colorado as a market; assuming that these are realistic markets, has there been in your judgment a foreclosure of those suppliers in that market?

A. No. In fact the number of purchasers of correspondent bank services, if we use that term by assumption, has been expanding over time and rather substantially—in fact, and we can show that as well as the dollar volume of services with reference to tables—with reference to Defendants' Exhibit 28 and 29. In the last page of 28 there were in 1961 164 banking organizations in Colorado eliminating five suppliers of correspondent services. In that year there were then 159 potential customers for these services. 159 banks who were potential customers for this service. And, there were on Table 29 in this year, the difference between one billion one hundred ninety-six million dollars of services—of deposits held by the five banking offerers in name and the total state deposits of two billion three million, so we're talking about 1.1 billion dollars of banking deposits and representing 159 potential purchasing

banks in 1961. The corresponding figures in 1970 are 203 banks eliminating the banks of the offerers of the services, 203 banks, and total deposits of 2.2 billion, so the deposit base has doubled and the number of banks that we're talking about as potential buyers has grown from 159 to 203. [1057] Q. What is the significance of the increase in the base of the market and in the number of customers?

A. Well, foreclosure to me suggests that a market is shrinking & they're drying up & we have here evidence which is very much the opposite. Foreclosure to me also suggests that entry into the market is undesirable. If a market is being foreclosed, a potential supplier would not be very anxious to come into a dying market, but we see from Mr. Smukler's testimony, for example, that the Security National Bank in Denver is eagerly and aggressively entering this market. Obviously, they must feel it is not a shrinking market and their entry would prove that.

THE COURT: Well, at best here, we just have one potential customer, don't we, namely, the First National Bank of Greeley?

THE WITNESS: Right, yes, Your Honor.

THE COURT: Are available at present presumably to all of the banks in Denver, which furnish this kind of service. At best, that's the result.

THE WITNESS: Well, this is what is allegedly being removed from the market.

THE COURT: So that, if you remove the First of Greeley as a buyer of these services, in part at least, why, that's the only change you are making. Whether it is substantial or not, I don't say, but it is—for better or [1058] for worse, that's all that is involved.

THE WITNESS: Yes, Your Honor, which I think is the purpose that we were addressing ourselves to in looking at the dollar income from this account.

THE COURT: $5,000.

THE WITNESS: $5,000 before tax.

THE COURT: That's been brought home many times.

Q. Doctor, speaking of the question of the appropriate line of commerce within which to measure the services under discussion here that might be vertically foreclosed, can you tell us whether there is in your judgment anything unique in the method of sale of the services of commercial

banks to the particular class of customers at issue here, commercial banks?

A. No, I think that the banks are offering to other banks much the same services as they are offering to other business customers, and, therefore, correspondent banking is not an appropriate line of commerce. Each product is priced separately, as we have heard testimony to, and which supports my own knowledge of the area. Each product is priced so that it will give a reasonable rate of return or at least designed that way to the offerer, and the services are not sold as a package. Some buyers might buy one. Others might buy several. The only product to my knowledge that would be peculiarly sold to commercial banks would be Federal Funds [1059] transactions, since this is a particular area that no other type of business could—would have any use to avail themselves of, and for this particular line one could say that Federal Funds sold to correspondent banks was a line of commerce, but even if that were a meaningful line of commerce there would be a national geographic market because these things are transferred by wires all the time, and as we have heard testimony people shop from New York to San Francisco to get a better rate, to take advantage of time differences and so on, so for these type of reasons I would conclude that correspondent banking is not a reasonable way to define a line of commerce.

Q. Do you know of any line of commerce within which the commercial banks offer their services which immunizes any other lines of commerce involved from the competition of other offerers?

A. No, I do not.

THE COURT: Why do the banks like this account business so much? It doesn't pay anything and it is uncertain, has all these defects.

THE WITNESS: Well, I think, Your Honor, that like any other business, correspondent business, business for correspondent banks can be and is profitable. To say that there is a $5,000 profit earned on the First National Bank of Greeley account doesn't mean to say it is not a desirable [1060] account. It means to say it is not a large account, that you are not foreclosing any single transaction which has substantial economic meaning.

THE COURT: Well, it is probably a feeder of other business.

THE WITNESS: Well, I think, Your Honor, the same thing could be said from a good commercial bank. If one has a corporate account, one is likely to be able to sell other services to the executives of that corporation and give them personal loans, perhaps relatively good credit risks, and so on, so once you have a relationship built up, sure, you get to know your customers. I don't think correspondent banking is any different in this regard from any other commercial relationship. I wouldn't imply that it is undesirable or unprofitable business. I would just imply that it is not unique as a line of commerce nor is the First National of Greeley's account substantial as an economic magnitude.

Q. Doctor, to put that particular discussion in focus, would the part-time attentions of 15 people out of a 1,400-man staff become compensated adequately at a very small proportion of the gross income of the organization?

A. Yes, indeed, it would.

Q. What of the appropriate section of the country within which to measure the impact of the alleged vertical foreclosure in any of the lines of commerce with which we [1061] are speaking?

A. Well, we would look to the area in which the First National Bank of Denver is an effective competitor in the sale of these services.

Q. Would that vary from service to service?

A. That would definitely vary from service to service. It would be a much broader area for overlines than it would be for check clearing where speed is of the essence, and in so analyzing this I would draw upon Mr. Hogue's testimony when he talked about traveling through eight states. For different——

THE COURT: You mean to say they didn't get this right either about the geographic area? You don't agree that Denver would be the appropriate——

THE WITNESS: No, I do not, Your Honor. I believe that——

THE COURT:—market?

THE WITNESS: I believe that one would have to look at service by service. I do not think that there is anything really unique about a Denver bank in terms of what it can

do. I'm not denying the convenience of a Denver relationship. I am just——

THE COURT: Wouldn't you agree it will be the place where it competes, where the First of Denver competes?

THE WITNESS: Oh, indeed, I think that the First of [1062] Denver does compete in the Denver area for most of the services that it sells. This is its market area, but in its correspondent banking business and its relationship with correspondent banks I think Mr. Hogue testified that 40 percent of the dollar volume of its accounts were outside of Denver.

Q. Outside of what, Doctor?

A. Outside of Colorado, excuse me, and that some better than 50 percent of the number of accounts were outside of Colorado, so I would think one would look toward a somewhat broader area, again depending upon the services, but if one wants to pool them together I would say that certainly the immediately surrounding states would have to be included.

THE COURT: Well, my point is this, they are not in competition with outlying banks in this area.

THE WITNESS: In the market for correspondent services, if there be such a market?

THE COURT: Yes.

THE WITNESS: I would think that they do compete for many types of these services with banks from Omaha and Kansas City and so on. Certainly, for overline business, it would be my judgment that they do compete. For check clearing, nowhere near as much so, because of the immediacy and speed with which these collections have to take place.

THE COURT: But, certainly, most of their [1063] competition would be with the banks right here in Denver, wouldn't it, to the extent of service?

THE WITNESS: It would probably be somewhat more direct with the banks in Denver, yes, Your Honor.

Q. If I draw 40 percent of my business from a given market area, Doctor, is that part of my service area?

A. Yes, it is.

Q. Does the First National of Denver compete for correspondent business where? Do you know what area it regularly solicits?

A. It solicits an eight-state area: Colorado, Kansas, Nebraska, Wyoming, New Mexico, part of Montana, a little part of Idaho, Texas Panhandle. I believe that approximately describes the area in which they compete.

Q. And with more than half your accounts and 40 percent of your business in that area, would you view that as part of your service area?

A. Yes, I would.

Q. Would you consider that you were competing with other banks offering those services in that area?

A. Yes, I would.

Q. Are banks outside of Colorado offering those services in Colorado?

A. Yes, they are.

Q. Are they offering those services to the rest of the [1064] banks served by banks headquartered in Denver?

A. Yes.

Q. What would you view the market area served by a Denver-based bank offering correspondent services in the areas indicated by the First National of Denver?

A. I would view it to be approximately those states I mentioned in which it is offering services actively, actively soliciting services.

Q. Is this on the same theoretical base that we discussed earlier as to the bases of determining sections of the country for potential competition cases?

A. Yes, it is.

Q. Doctor, are average balances an adequate measure of market share in correspondent activity?

A. No, they are not. It depends very much on what services you are offering and selling for those balances.

Q. Are they a measure of correspondent activity?

A. No, they are not, because some balances can be completely dormant and other balances can be paying for a wide variety of services and other balances could be paying for only one service and in large quantity and so on.

Q. Would uncollected balances tend to vary substantially from account to account?

A. Yes, they would vary directly with activity. An account which is totally inactive, the dollar volume on the [1065] account would be fully collected, whereas one which is very active would have, as we have seen, perhaps as much as 80 percent in uncollected funds.

Q. Now, in analyzing the profitability of the First National Bank of Greeley, I believe we indicated a rather high level of uncollected balances. Can you associate that high level of uncollected balances with the kind of business activity you would see in Weld County, Doctor?

A. I would associate that with large activity of that account, relative to its size.

Q. Would association with international business tend to mean there might be a substantially high order of uncollected balances?

A. It could very well be associated with that, yes.

Q. So when you saw a balance of $1 million or $200,000, would you be able to tell which account was the more active or the more profitable?

A. That figure in and of itself would not tell you anything.

Q. Do we then have any measure in this case, in the case presented by the plantiff herein, upon which we can judge either the profitability or the activity of the various offerers of correspondent services, either in or outside the State of Colorado?

A. No, we don't.

[1066] Q. Turning, Doctor, to this question of the convenience and needs of the community to be served herein, can you tell us whether or not——

THE COURT: I think we will take our afternoon recess at this time. You may step down.

MR. METZGER: Yes, Your Honor.

(Whereupon, at 3:14 o'clock p.m., the Court recessed.)

[1067] (Following a recess the trial resumed at 3:43 p.m.)

MR. SCHWARZ: Your Honor, may I ask the Court to indulge me for a moment to correct the record for one fact that entered in the record yesterday.

Yesterday the witness Mr. Falkenburg at Page 872 of the transcript testified that one of the downtown Denver banks, a very small one, now offers a free checking account, full range across the board. We have determined today that that is not true. No such bank does offer such a free checking account, and I have been authorized by the government to say that this is a stipulation, that the record can be changed to that effect.

THE COURT: All right.

MR. BRENAN: We would agree to that.

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[1071] Q. In summation, Doctor, do you believe that this proposed affiliation would in reasonable probability substantially lessen competition in Weld County or, if you will, in Greeley?

A. No, it would not. It would have no effect on competition. Any anti-competitive effect would be I think outweighed by the pro-competitive factors I have talked about.

Q. Do you believe that the First National Bancorporation is a reasonably likely potential entrant within the reasonably foreseeable future into Greeley de novo?

A. No, I think it is highly unlikely that de novo entry for the reasons we have discussed is even more than a remote possibility in the reasonably foreseeable future.

Q. Do you believe that there is any substantial vertical foreclosure associated with this proposed affiliation?

A. I believe there is not.

MR. METZGER: No further questions, Your Honor.

MR. SCHOEPKE: May it please the Court.

CROSS-EXAMINATION

By MR. SCHOEPKE:

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[1073] Q. I wonder, would you tell us again what the name of the organization is that you are associated with?

A. Mathematica.

Q. And how big a staff did you say Mathematica had?

A. We are just under 200 people now, in total.

Q. Might I just ask, do the fees that you receive for appearing here go to you personally or do they go to Mathematica?

A. They go to Mathematica.

MR. METZGER: Objection, Your Honor. I think we have gone far enough on this. Counsel is not inquiring on any area that would be relevant here.

[1074] MR. SCHOEPKE: I have finished my inquiry into this, Your Honor, at least on the money part of it.

THE COURT: All right. Well, that indicates that he doesn't have any personal interest, if the fee goes to the —is this a service organization? Do you contract with government agencies?

THE WITNESS: Yes, about 80 percent of work is with——
THE COURT: Federal Government?
THE WITNESS: Federal, state and local.
THE COURT: For making studies and surveys?
THE WITNESS: We have a variety of assignments.
THE COURT: Seminars, too?
THE WITNESS: We do some of that, too. Our largest contracts are now with OEO and Department of Health, Education and Welfare. We are doing experiments on negative income tax in New Jersey and an income maintenance experiment in Seattle and another one starting here in Denver shortly. These are the largest in volume contracts the company has, but we have worked for almost every major federal agency and states and localities and manufacturing companies right through the line of industrial type clients. It is research and consulting, some management consulting as well.

Q. Now, Mr. Metzger asked you at the beginning of your testimony if you had consulted at all, done any consulting work with the Controller of the Currency, and I believe you indicated [1075] that you had?
A. Yes.
Q. And was that in connection with the United States vs. Provident Bank case in Philadelphia?
A. During the time—yes, but during the time that I testified in Provident I was also a regional economist for the Controller in the Third National Bank Region, State of Pennsylvania, and I did testify for the Controller in the Provident-Central Penn merger case, which you mentioned.
Q. And you testified generally, did you not, that that particular merger would not have an anti-competitive effect?
A. Yes.
Q. And isn't it a fact that that case was decided in favor of the government?

MR. METZGER: Objection, Your Honor. What on earth does it prove with relation to this case? The relevancy of this is like straining for a gnat.
THE COURT: Well, we have heard a good deal about the cases the government lost. Maybe this will counterbalance that in some way.
MR. METZGER: Only if he mentions the next three cases

that the Doctor testified on, Your Honor, but he is going to skip that.

MR. SCHOEPKE: Well, you can bring that up on recross, if you wish. I won't object.

[1076] Q. Now, you also testified I believe in the Phillipsburg Bank case, I believe, did you not?

A. Yes.

Q. And did you not testify in that case that banking was not an appropriate line of commerce in bank merger cases and that the particular merger there involved in the Phillipsburg case would not have an adverse competitive effect?

A. Yes, I so testified.

Q. And is that not the case that went to the Supreme Court and was reversed by the Supreme Court in favor of the United States?

A. Yes.

Q. Now, Doctor, I don't wish to—well, first off, I believe in the beginning of your testimony, when we were having that discourse about whether or not you were an appropriate person to interpret what Congress had in mind in speaking of the rising tide of concentration I believe that you then indicated that you felt that the rising concentration was something that was more concerned with industry in general and to you at least it was not as important in the banking field as it was in overall industry. Was that about your testimony?

A. I don't think that's precisely what I meant. I was talking about national trends across many industries that the Congress was observing, talking about a rising trend in concentration across many industries which had experienced such a trend, and then I addressed myself to the specific question of whether that was true in banking or not, whether that statement was applicable to banking or not. [1078] Q. Well, now, I would like to read you—I'm not going to discuss law with you, but I would like to read you a statement from the Philadelphia opinion and ask you whether or not you agree with it.

> "There is no reason to think that concentration is less inimical to the free play of competition in banking than in other service industries. On the contrary, it is in all probability more inimical."

Do you agree with that statement, or do you not?

A. I agree with the statement——

THE COURT: What are you reading from?

MR. METZGER: United States versus Philadelphia United States National, 374 U.S. 363.

MR. SCHOEPKE: This witness, Your Honor, may have various theories of his own about what's important in terms of concentration and competition and so forth, but they may not square with what is the established law of Section 7, so I am merely directly my—I am just asking him whether or not he agrees with some of the——

THE COURT: I think he ought to have a chance to read it in its context.

MR. SCHOEPKE: May I show it to him in its context? I don't mind how he answers it.

THE COURT: Well, I think as a matter of fairness—I mean, you can pick out any sentence and read it.

[1079] THE WITNESS: Where are we?

MR. SCHOEPKE: I don't know if there is anything to start before it. This is what I just read from. This is on page 369 of 374 U.S., Philadelphia National Bank case.

THE COURT: I think what he said really was that there was less concentration, tends to be, in banking than in other industries.

MR. SCHOEPKE: May I object to Mr. Metzger giving signals?

MR. METZGER: I was going to make the point verbally and I will. In order to make it clear, the context of that statement, Your Honor, the court was speaking in the context of the fact that in the Philadelphia market with about six billion dollars worth of deposits there had been a reduction in a 14-year period from 1947 to 1961 from 108 banks to 40 and that the 7 largest banks in the market had increased their market share from 61 percent to 93 percent, and that was the context of that representation by the court, and I think that ought to be in the contemplation of the witness when he discusses that sentence.

MR. SCHOEPKE: I don't see that that's in the context. This is just standing there right by itself in discussing the general question of concentration.

THE COURT: Overruled. He can answer the question.

Q. All right, would you tell us?

[1080] A. Certainly, I agree with the first half of that statement. I do not necessarily agree that it should be any

more so in banking than elsewhere, which is the second half. I believe, however, that when one talks about the effects of concentration on performance that it is very critical to know exactly what the appropriate market is, what the relevant line of commerce is, and what type of concentration we are talking about, because I think that the link between the numbers, the share of market numbers, and the actual economic consequences about what is happening or is going to happen is very tenuous.

Q. And you think there should be different rules applied to banking than to industry in general?

A. No, sir, I do not, in the context of the statement that I have just made.

Q. Now, I would like to ask you in this connection, do you believe that market structure of an industry is a valid starting point for analyzing the competitive aspects of that market?

A. Yes, it is a valid starting point.

Q. And do you believe that market structure in banking is a valid starting point for analyzing the competitive structure?

A. Yes, I do.

Q. And how would you compare it to performance? Do you think it is more important, that market structure is more [1081] important in analyzing competitive aspects of a market or performance?

A. I think performance is competitive aspects. It is performance that we are talking about that we are looking toward. The reason that concentration may be bad, that certain types of concentrated market structures may be undesirable, and the reason that we may try to eliminate them through antitrust laws is because it is assumed that there are certain correlations between market structure and performance. What I am saying is that market structure is a first and reasonable step to begin to analyze what performance is likely to occur, because other things equal in a very highly concentrated market one would expect different performance from another appropriately designed market which has many, many sellers, and, therefore, that is a first step in our analysis of what constitutes performance.

Q. Are you familiar in economics with the term "concentration"?

A. Yes.

Q. What does that mean to you?

A. Concentration is normally used to refer to the proportion of a market which is held by a given number of sellers or given number of buyers, if one is looking at the buying side.

Q. All right, now, let me ask you this. If you have [1082] a situation of the type which you have been testifying on——

THE COURT: Well, doesn't it mean a market which is pre-empted by sellers who are capable of controlling the supply, the profits and price?

MR. SCHOEPKE: Yes, the number of those with a sufficient share of the market among a few.

THE COURT: Yes.

MR. SCHOEPKE: So that they are——

THE COURT: I mean, that's what you told me earlier.

MR. SCHOEPKE: Yes.

THE COURT: I think.

THE WITNESS: Well——

THE COURT: In other words, a market which is likely to produce restrictive practices.

THE WITNESS: Your Honor, may I——

MR. SCHOEPKE: Yes, likely, and in parallel action, live and let live, all of those things.

THE COURT: Yes.

THE WITNESS: May I come in on this, Your Honor?

THE COURT: Yes.

THE WITNESS: I look to parallel action and restrictive practices and the exercise of market power by the large firms in the market as performance criteria, and the way I would define concentration is simply a numerical value. [1083] A concentration is the percentage of the sale or the assets or whatever indicia is held by the one, two, five, ten largest firms. An overall concentrated market is one in which the number of firms is too few so that the performance is adversely affected in the way that we have been discussing it. One can have a performance—a market, however, which is numerically concentrated where you have a few firms holding a small portion, small proportion of the market, yet because of the economies of scale or because of the restrictions of regulation or because of a number of other factors, including the threat of potential entry, you get a

very acceptable level of performance. In fact, you get a much better level of performance than you would if you had many, many small firms not able to produce at an efficient rate, so I am really trying to draw a distinction from Mr. Schoepke's questions from what would be good performance and what would be unsatisfactory performance, and I am simply saying that all that the concentration ratios tell us is a very initial starting point, a basic index of how a given type of industry is structured, and in and of themselves they really tell us very little about how that industry is going to perform or how one could expect it to be able to perform under certain situations.

[1084] Q. (By Mr. Schoepke) Well, Dr. Baxter, may I just review this portion from the Philadelphia opinion, and I will give it to you so you can see if I have taken it out of context. "Furthermore, the test is fully consonant with economic theory that competition is likely to be greatest when there are many sellers, none of which has any significant market share, is common ground among most economists and was undoubtedly a premise of the congressional reasoning about the anti-merger statutes."

Except for the last phrase which we have been through, do you agree or disagree with that statement?

A. As a broad generality of economic theory, I think I am aware of the context, sir. There is—as a broad generality of theory, it is something that is true. But it is true again other things being equal, and the question is whether or not—the question has to be determined to what is a significant number of sellers in any given market. What is a sufficient number of sellers to constitute effective competition. When we are talking about two sellers—if there were two banks in Philadelphia, and we are talking—and if we were talking about whether a third bank would add to competition in a market like Philadelphia, my answer would be obviously a market of that size, given the structure of the market, this would be just by simple virtue of being another number as this quote points out, it would be an [1085] addition to competition. But, I think you can only talk about these things in terms of the type of market, in terms of the size of the institution, the necessary size enabling it to compete, and in terms of what national benchmarks would imply is a reasonable number of firms competitively in that type of industry.

I don't think that a hundred banks in Philadelphia would

behave any better than 50 by virtue of these numbers, the difference. The fact is that they would probably behave worse because they would have much less resources to do the things that have to be done.

Q. Dr. Baxter, I show you Plaintiff's Exhibits in evidence Nos. 73 through 86, which you will recognize, I am sure, is the market structure of the City of Greeley and the Greeley area in various contexts and various terms.

A. Yes.

Q. I believe I have shown you Plaintiff's Exhibits in evidence No. 73. Now, I show you 74—Plaintiff's Exhibits 74 through 86 and ask you if you would examine those.

A. Yes, sir.

Q. Now, I would just like to ask you, Doctor, on the basis of your examination of those documents, would you consider in your opinion as an economist whether or not banking in the city of Greeley and/or the Greeley area is concentrated.

A. I would consider that it is not concentrated on the [1086] basis of these documents plus the other information that I have, the knowledge of the size of the community, the knowledge of the size of the banks, the relation of the community to its surrounding area, and so on. On the basis of these documents alone, without any other such information, I couldn't arrive at a reasonable judgment.

Q. On the basis of these documents plus your other examination and study and so forth, I take it that it is your opinion that the Greeley market or the city of Greeley and Greeley area is not a concentrated banking market.

A. That is correct.

Q. Now, I'd like to call your attention to Defendant's Exhibit No. 29——

MR. SCHOEPKE: And as a premise, Your Honor, we have a very serious pragmatical problem with this. But, subject to correction, I'd like to call the witness' attention to——

Q. You have there in Defendant's Exhibit No. 29 a table indicating from these figures at least that overall statewide concentration has dropped slightly. Is that pretty much what the table shows?

A. Yes.

Q. Now, during this period I believe—it was also part of the testimony that some 60 new banks have been organized. In view of the fact that 60 new banks have been [1087] or-

ganized and that there is very little drop in concentration, I'd like to ask you—does not this indicate to you that the Denver market is concentrating—I mean, that the state of Colorado banking situation is concentrating?

A. Quite the opposite, Mr. Schoepke. It indicates that the structure of the market, if Colorado is a market, and I have discussed that issue earlier—but if one were to assume that Colorado were a market, it would imply to me that the market was anything but concentrated because in a really concentrated market, new entry is unlikely, is prohibitive. You can't make a profit if the market power of the biggest firms in that industry, in that market, are going to prevent the little guy from coming in and doing reasonably well, and we have seen here that he does come in.

Q. But if you've got 60 new banks coming in, would you not expect the concentration among the market leaders to drop substantially?

A. No, I don't see why that would imply necessarily in a market of 230 banks. The new banks that are coming in are obviously going to be very small in their early days. All banks in the market are growing and one would expect—and there have been some acquisitions by holding companies. This table refers to banking organizations rather than banks. And so I would say that this four-point or almost four-point drop in concentration as measured on a statewide basis would be [1088] barely significant.

Q. Do you consider that an indication of a deconcentrating market? Is that it?

A. I don't consider that Colorado is a banking market as I have indicated in my direct testimony.

Q. I'm sorry. You discussed this document. Would you consider——

A. I said in looking in terms of the trends in the state, and in looking in terms of the largest organizations in the state, that this decline over the last ten years implies to me that there is some reduction in the importance of the largest organizations in the state to the total deposits of the state. The fact that new banks have been chartered during the same time also implies to me that this is not a concentrated market.

Q. Now, I'd like to direct your attention to document—Defendant's Document No. 30, if I may, which is a list of percentage share of deposits in the largest banking or-

ganizations in the various states. Do you know how these concentration figures came about?

A. I'm not sure I understand your question.

Q. Well, do you know how many of these concentrated markets are of the result of merger activity? Do you know how many are the result of internal growth? Do you know whether they were before the antitrust laws or after the [1089] anti-trust laws? I mean, do you know these things?

MR. METZGER: I don't believe the witness has testified that these markets are concentrated. I think that was counsel's predicate.

Q. Well, then, I will confine my question to the percentage share of deposits of the largest, the three largest and the five largest banking organizations in all of the states. Do you know how the percentage shares that are here listed came about? Did they come about by merger or by internal growth or just growth of the state? Or what? Do you know?

A. Yes. I cannot give you a detailed history of each state by state, of course, but in general I think I can be responsive to your question.

[1090] Q. All right.

A. Most of the present statewide banking organizations in those states that allow statewide branching and statewide holding companies have been formed—have come about through mergers and acquisitions than internal growth. There are very few large banks in branch banking states or holding company states, and—confining ourselves for the moment to branch banking states—that grew to anything near their present size without mergers and acquisitions and that this type of activity has enabled these banks as they have become larger to actually serve more markets and serve them better and in the context of the question that you asked me to say that a given percentage is held in statewide deposits by a given number of banks is to ignore the fact that I testified to that banking markets are essentially local in nature and the issue is really in statewide banking states where concentration may be high on a statewide level, what is the structure of the individual markets. How many alternatives does the customer in these individual markets have open to them. I would submit that these states on a statewide basis appear to be concentrated and have gotten there through

merger, still leave the consumer with a great number of alternatives and more competition than the local level.

Q. Well, you're entitled to some latitude but I simply asked you if you knew how they got to these concentration [1091] figures.

THE COURT: Now, you know.

Q. Now, I believe that you indicated that in your opinion that larger banking customers have wider markets, is that right?

A. Yes.

Q. And that the smaller banking customers are confined to the more local markets. Isn't that about what you testified to?

A. Yes.

Q. Well, assume that you have concentrated local markets—I'd like to ask you—aren't the smaller customers the ones that are most adversely affected in concentrated markets that are local in scope?

A. If a local market were concentrated I think that that is a correct supposition. And, if from this concentration—I should add—stemmed sort of inadequate performance that I'd try to preface this with, then these smaller customers could not travel as far as the larger customers and given those judgments I would agree with your statements.

Q. Now, I'd like to just ask you about Defendants' Exhibit 32. Am I correct in my recollection—that is a list of states which have unlimited statewide branching. And am I correct in my recollection that you indicated that in states which permitted complete statewide branching, that there was [1092] a concentration of deposits and a fewer number of banks than other states which did not permit statewide branching?

A. On the statewide level, yes.

Q. Now, I'd like to direct your attention to Defendants' Exhibit 33 and 34, Doctor Baxter. These talk about the average number of commercial banks per city in various cities. Am I correct in my understanding that these just talk about the number of banks, you know, bank by bank rather than the relative size of banks, don't they?

A. Yes. They talk only about the number of alternatives. In the case of Table 33, it is banks. In the case of Table 34, it is banking organizations. The number of alternatives

available in the cities of specific sizes under these two banking structures.

Q. And this is just a nose count of the number of either whatever basis you have used in the respective tables, the number of banks or the number of banking organizations—it's just a nose count? It has nothing to do with the relative size of the respective banks?

A. That's correct. But I would add that a nose count is relevant. Because, it talks about competitive alternatives.

Q. Well, then, on the basis of this nose count, is it not conceivable that one of the banks that you have listed in your nose count might have 80 percent of the business and the other four or five or two or three only have 10 or 15 percent?

[1093] A. In some of these communities, that is certainly true. The consumer still has a certain number of alternatives and when a number of firms compete and one aggregates statistics, one always tends to concentrate in on a few issues.

[1094] Q. Dr. Baxter, you also discussed with Mr. Metzger Defendants' Exhibit No. 39, which traces deposits and market share of banks in Greeley from 1950 to 1970, and I believe that you indicated that in percentile terms at least the First National Bank of Greeley had dropped from 49 percent of the market down to——

THE COURT: 31.

Q. (Continued) 32.6 percent——

MR. METZGER: 49.8.

Q. (Continued) 49.8 at the beginning. Now, I direct your attention to the Greeley National Bank, which as is indicated went from 33.3 percent up to 34.9 percent. I would just like to direct your attention to the absolute number of deposits between those two banks. Isn't it a fact that the Greeley National Bank is only slightly larger than the Greeley First National Bank in absolute deposits?

A. Right, it is.

Q. And I believe that you also testified to the—well, do you recall what you testified with regard to the West Greeley National Bank or the Greeley State Bank as to its—that's I believe what you talked about—as to its limited growth in this period of time?

A. I don't believe that I discussed the State Bank of

Greeley. I would interpret its limited growth during this period of time as evidence that really another bank is not [1095] justified by the economy of the area and also of evidence to their ability really to do something unique and aggressively go out and compete. I believe my testimony was to the decent performance of the Cache National and West Greeley National, which are affiliated with Greeley National.

Q. All right, one started in 1962. That was the Cache National Bank, and then the West Greeley National started in 1970. Do you really think that the limited period of time is sufficient for you to base an overall judgment as to the significance of these banks in the particular competitive market? Is five or eight years enough for a newly organized bank to permit you to make a determination on the competitiveness of the market?

MR. METZGER: If I may, just to correct the record, that the Doctor may have it before him, the State Bank of Greeley was not a newly organized bank. It was a conversion of an industrial bank and its deposits at the end of the first year reflected that conversion in those dollars already on deposit at that time, and with that caveat I think I have no objection.

A. Mr. Schoepke, I am not certain I understand. Are you referring to the Cache National and the West Greeley National?

Q. Let's take them one by one.

A. Well——

[1096] Q. The Cache National?

A. Well, it was started in 1962, or that was the first year—started during '62, and I think that the fact it achieved these deposit figures indicates that they were offering a service. This looks like a fairly decent growth rate. Their market share has increased steadily from initially up to six percent.

Q. Well, that's all on the record. I am just asking you do you think that from the years '62 through '67 is a fair time period within which that you can properly judge the competitive situation in the Greeley market vis-a-vis new banks?

A. Well, it would depend for what judgment. I am not—it would depend to what purpose I was using five or six years of observation. I couldn't answer that generally. In the case before us I think one could say that it was a

long enough period to indicate that they have done relatively well, whereas two or three years would not be long enough.

Q. Would your same answer apply to the West Greeley National Bank, which was organized in '63?

A. Yes, and they have not done as well.

Q. And would it also apply to the State Bank of Greeley, which was converted from an industrial bank in 1965?

A. Yes, probably more so because of its past history.

THE COURT: These are all part of another holding [1097] company.

MR. METZGER: The Cache National and West Greeley National are affiliates of the Greeley National, and the Greeley National Bank, those two banks and the Farmers Bank of Ault became part of the ABC holding company group.

THE COURT: That's Cache?

MR. METZGER: Cache, West Greeley and the Greeley National and Farmers Bank of Ault are four of the 13 banks in the ABC group.

MR. SCHOEPKE: What happened, Your Honor, is that the Greeley National Bank went out and organized affiliates in and around Greeley——

MR. METZGER: Not quite accurate, Your Honor. The Farmers Bank of Ault was acquired——

MR. SCHOEPKE: Well, Ault is not the one we mentioned. Cache was organized as an affiliate and so was the West Greeley Bank, following the population out in the suburbs, the same sort of thing that First National Bank did here in Denver, so it was a group of three affiliates and they joined the ABC holding company, of which you have heard in this case.

THE COURT: Well, it is not like a brand new bank starting up fresh, without any support.

MR. SCHOEPKE: May I ask the witness that question?

Q. Do you think that in view of the fact that these banks were affiliates of the Greeley National Bank, do you [1098] think that is a factor that would be appropriate to take into consideration in considering their success over this relatively limited period of time?

A. I would say it is a factor, yes, definitely.

Q. Now, I believe, Dr. Baxter, that you indicated that insofar as banks are concerned that a lot of bank customers,

once they establish a relationship with a bank, don't shift their relationships too readily. They tend to stay with one bank. Was that about the substance of——

THE COURT: He is talking about a small community.

MR. SCHOEPKE: In the small community.

THE COURT: That the drugstores deal with different banks and stay with them.

A. Yes, and relative to other industries where one is purchasing a consumer product, for example, one buys cigarettes daily, one doesn't change a bank relationship daily.

Q. Too readily?

A. Yes, and I was also talking about that in terms of the impact of advertising on this type of industry. You are not going to switch back and forth every day.

Q. But because of that slowness to switch, shall we say, would you say that banks in a local market are not in competition?

A. No.

Q. They are still in competition, are they not?

[1099] A. Of course.

Q. In other words, if one bank offers a terrific service, a regular customer of the bank across the street might then be tempted to shift his account or his business or his custom, whatever he has, to the bank that was giving him the deal that appealed to him?

A. Indeed, he would, and that's the benefit of competition.

THE COURT: He wouldn't shift it in order to get a trip to Las Vegas, though, I don't suppose. I think he would value more highly having a source of a loan if he ever needed to borrow money. Everybody has to search sooner or later, I would expect.

THE WITNESS: And I think in the context that I was talking about this, Your Honor, we were interested in whether or not advertising was a really important advantage to banks, and the question came about could they through very heavy advertising budgets, which do not exist in banking, be able to prevent new firms from coming in, and so to speak entrench themselves.

In terms of the smaller communities, from our survey I would only add that the hypothetical offer of a better service, which is what I would equate to competition, didn't occur very often. Of course, the customers would respond

to it and would switch, other things equal, if they could get a [1100] better service, but whether that was forthcoming or not was the subject of my investigation.

Q. Now, Dr. Baxter, you were asked by Mr. Metzger about triggering and the gist of your answer, if I recall it correctly, was that the triggering effect in banking was not particularly impressive on you because banking is a highly regulated industry. I would just like to ask you in your opinion as an economist do you think that because of the presence of regulatory authorities in the banking industry, do you think that the antitrust laws should not apply to the banking industry?

A. No, I think that the antitrust laws should definitely apply to the banking industry, and indeed one of the functions of the Justice Department to advise on all these mergers and acquisitions is to—and to file suit where necessary and where it is deemed necessary—is one of the reasons why I do not think much of the triggering concept, because to say that this acquisition will trigger the next one and the next one and so we will get to a hypothetical point five years later where there will be an acquisition that would be substantially anti-competitive doesn't apply in the banking industry where you have constant surveillance, because when you sue five years hence that substantially anti-competitive acquisition will be declared illegal and all those that went before that were not substantially anti-competive by assumption would not be declared illegal, whereas in an industry that you [1101] do not have this regulatory power to constantly surveil, constantly look at each application you will get by the board, you sue now to prevent what will happen because you can't possibly track each merger and acquisition. This was my distinction.

Q. Do you think we should remove the triggering influence as one of the dangers that we in the Antitrust Division should look at in analyzing the competitive effect of bank acquisitions?

A. I can't quite answer that yes or no without an explanation.

Q. Well, should we ignore triggering or should we not?

A. I think the triggering in a merger or acquisition such as this one in banking which is regulated is not a very meaningful concept to me.

Q. Is it a totally meaningless concept?

MR. METZGER: May I ask, Your Honor, if that was in any particular context?

MR. SCHOEPKE: Well, I am just following his answer, Your Honor. He said it was not very meaningful. Is it completely meaningless?

MR. METZGER: Are we talking about banking or industry?

THE COURT: You mean the way he defined it?

MR. SCHOEPKE: Yes, how do you define it?

THE COURT: Well, he defined it already. He said in [1102] the procedure it meant that although this might be harmless in itself it might trigger three or four acquisitions and the third or fourth one might be anti-competitive and that fact shouldn't influence you in deciding the validity of the instant one. Do you think it should?

MR. SCHOEPKE: Well, is Your Honor threatening to put me under oath? Yes, I think the triggering influence is always present. That is one of the elements that we have to look at.

THE COURT: As he defined it.

MR. SCHOEPKE: Brown Shoe said if we permit this merger involving five percent of the market we will be called upon in a few years by other people to approve a similar merger, and on and on we go.

Mr. METZGER: I think Brown Shoe discussed undoing other mergers, Your Honor, which is the key distinction.

A. Where each shoe industry merger can't possibly be watched and reported before it occurs and passed on by the regulatory authorities where they have a responsibility to consider competitive effects, I think the triggering concept is quite different.

Q. Yes, but——

THE COURT: In other words, if you set a precedent, I expect there is some danger it will produce some anti-competitive mergers in that situation, is that right?

[1103] MR. SCHOEPKE: Yes, and might I just ask the witness it is true we have been discussing shoes, but in the banking field it is true that we have to sue a proposed merger within 30 days after its approval?

THE WITNESS: That's true.

Q. You know that as an economist, do you not?

A. That is correct.

Q. Now, were you in the court the other day when Mr. Moon, the president of Affiliated Bankshares Corporation, testified?

A. Yes.

Q. Did you hear him say that one of the factors that influenced the decision to form the Affiliated Bankshares was the fact that United Banks and First National Bancorporation were engaged in negotiations to acquire banks in various important areas in Colorado? Did you hear him say that?

A. I don't think that was the spirit of that portion of his testimony, Mr. Schoepke. I think what he was saying was that the fact that these other people formed holding companies, the things that prompted these other holding companies to grow around the state, to want to grow around the state, were similar to the factors that prompted him to do this. He wanted a holding company which had the advantages, the economies of scale and so on that we have been talking about, and so did these other people, but it wasn't their presence in the market [1104] or the threat of their dominance in the market that forced him to do anything. I am sure the record will show what Mr. Moon said.

Q. Well, the record says what it says, but didn't he indicate that it was to maintain his competitive position vis-a-vis these other holding companies? That was one of the factors that influenced the formation of the Affiliated Bankshares Corporation?

A. To do the sort of things to compete effectively and thereby maintain his competitive position.

Q. Do you agree with Mr. Moon?

A. Yes.

THE COURT: Well, that implied that the action is a competitive one, doesn't it, because it is defensive? In other words——

THE WITNESS: Well, Your Honor——

THE COURT: It is self-defense?

THE WITNESS: No, I wouldn't characterize it as defensive, Your Honor. I would say that there are advantages inherent in the holding company form of organization, taking advantage of economies of scale, being able to provide better services and better personnel and so on, and these advantages induced United Banks to make acquisitions around the state and induced the First National Bancorporation.

THE COURT: Well, I know, but he might be perfectly [1105] happy to stay at home. He has plenty of money.

Why should you stir it, but if your competitors are moving, why you have no choice.

MR. METZGER: May it please the Court, this is precisely why—in order to obviate the contention that this was a defensive move—that I asked Mr. Moon the question, "Would you have made this affiliation if no one else had created a holding company," and his answer was yes, that his holding company was organized for his own motives, not defensively. That stands out stark and clear in the record, Your Honor. This was not a defensive move on his part. He said, "I would do it if no one else moved."

THE WITNESS: Might I also point out, Your Honor, in response to your question, that the record from my testimony has shown that where banks did not affiliate with holding companies, in holding companies, which did enter the discussion of the Western Bancorporation and the United Banks' movements into various areas, that these other banks were nonetheless able to maintain their market shares, and there is no evidence that the movement of these holding companies forced anyone else to do anything. There is I think very strong evidence that independent banks were able to continue to compete. Nonetheless, they might have to compete harder against a more effective organization, which is the sort of benefit that we are talking from a competitive banking structure.

[1106] Q. Well, then, do I understand that the test in determining whether a particular acquisition is competitively adverse is a retrospective one, to look behind and see what's happened in the past, or do you look ahead? Which one do you apply in analyzing a competitive or the competitive impact of a corporate or a banking acquisition?

A. Well, you look ahead in terms of what is likely to happen, but you predict the future and learn about the future and understand what is reasonable as a fact as opposed as to what is just a theoretical construct by looking at what has happened in the past and in circumstances which are as similar as you can structure them. They, of course, will never be identical, but you structure them as similar as possible and then try to learn from the past to project into the future.

[1107] Q. Well, can't we get that benefit in Greeley by de novo entry without losing the competition provided by an independent First National Bank of Greeley?

A. Well, Mr. Schoepke, I think there are several points that I have to make to respond to your question.

First of all, we are not losing anything by the movement of the First National Bancorporation in Greeley if my testimony is deemed correct to the extent that the potential entry is highly unlikely in the foreseeable future. We have heard a lot of testimony about the so-called Wings theory, and my judgment is, and I think the sum of the testimony has been, that it is very difficult to prove that there is an effect on the activity of the banks in the market.

But, if I am in my judgment with these positions, we lose nothing by having the First National Bancorporation come in. Now, if potential entry as another force is unlikely, given my own evaluation of the growth of the market, of the number of banks in the market, and of the regulatory climate I believe such potential entry is highly unlikely.

Q. You mean to say that you take the First National Bank of Greeley which is some 40 million—40 and a half million in deposits and you substitute for that Bancorporation which is some 500 million in deposits? You mean substituting that for the First National of Greeley will have no competitive effect in the Greeley market?

[1108] A. I think it will have a strong procompetitive effect. We're not putting all the resources of the First National Bancorporation into Greeley. We are putting some of the management talents, some of the depth, some of the know-how to work.

Q. Some of the deep pocket, maybe?

A. I see no ability, no reasonable probability of why the resources of the First National Bancorporation can be used to adversely affect the competition in this area. I think the evidence of what has happened to Western Bancorporation and what has happened to United Banks in the markets that they have moved into, show no evidence to be able to do anything anticompetitively just to compete more.

We believe that the First National Bancorporation would be able to compete more effectively in the Greeley market as it does in the Denver market.

Q. With whom?

A. With the banks that are in the Greeley market in Greeley and with the banks that are in the Denver market in Denver.

Q. Well, would you be able to compete—you say with the State Bank of Greeley—the little four or five million dollar deposits bank?

MR. METZGER: Two.

Q. Two million? Is that one that it would be able to [1109] compete better with?

A. It would be able to offer a better variety and quality of banking services to the consumers in the Greeley area. In that sense, it would compete more effectively with all the banks in the Greeley area. I should add that the three existing banks already seem——

THE COURT: What's the name of this poor little bank?

MR. SCHOEPKE: The State Bank of Greeley.

THE COURT: Two million? Do they compete now? Have they competitors now, you say?

THE WITNESS: They are competitors, Your Honor, but I would add not very effective competitors. They are viable. But, they have not shown very good growth. It's a convert from a former industrial bank.

THE COURT: The state bank—is this a downtown bank?

THE WITNESS: Yes, it is, Your Honor.

THE COURT: So that is the fourth downtown bank, really?

THE WITNESS: Yes.

THE COURT: We haven't heard much about them.

THE WITNESS: I would argue that they are not really able—that the advantages of the First National Bancorporation over the First National Bank of Greeley in competing with the small bank is zero. Because, the First National Bank of Greeley [1110] is quite successful now I think in competing there.

Q. (By Mr. Schoepke) In other words, the First National Bank suffers from no competitive disadvantages vis-a-vis the State Bank of Greeley, does it?

A. I would think that it does not.

Q. Does it suffer—does the First National Bank of Greeley suffer any competitive disadvantages as against the United Bank of Greeley, the former Weld County Bank?

A. Yes, I think it does. As I have testified, United Bancorporation has not to this point made an effective use of the Denver statewide resources in terms of being able to provide better service in Greeley because it has been

their philosophy to operate their banks in the holding company quite independently.

But, still, when it comes to depth of management, when it comes to specialized knowledge and service and know-how, I am certain that the holding company can do just a little better job and this little better job is what, at the margin, makes a new customer coming into an area go one place rather than the other. It's the margin—that is what competition is really all about.

So that if we are going to try to protect competition and enhance competition rather than looking strictly at protecting competitors, then what we want to do is say, given that these institutions are viable, as I think we would agree that [1111] they are, how can a new organization going in here better help the customer because it is the customer that competition is designed to protect.

Q. Well, do you think by having the First National Bancorporation move in through the acquisition of the First National Bank of Greeley—do you think they would be better able to compete with Affiliated Bankshares in Greeley?

A. Yes.

Q. In what way?

A. I think they would do a better job, a more competent and more in depth job of providing the source of services that the people in Greeley need. I think the fact that Greeley National and its affiliates have gained market share over the past 20 years has implied that they have done a better job than the First National of Greeley.

Q. Well, do you think that a merger or a holding company acquisition is justified because there are bigger competitors in the market?

A. Not sufficient at all to justify it.

* * * * *

[1121] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

FIRST NATIONAL BANCORPORATION AND
FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

Proceedings before the HONORABLE WILLIAM E. DOYLE, Judge, Presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Wednesday, May 12, 1971.

APPEARANCES:

(As heretofore noted.)

[1122]

CROSS-EXAMINATION (CONTINUED)

By MR. SCHOEPKE:

Q. Dr. Baxter, I believe you stated yesterday that it was United's policy or has been United's policy not to change things very much up in Greeley? Was that your testimony?

A. It had been their policy to allow the former Weld County Bank, the United Bank of Greeley, to operate relatively independent and not to impose very much in Denver to this point in time.

Q. And what is the basis of your knowledge that there was—that that was their policy?

A. I had an interview with Mr. Knight, their chief executive, and discussed this issue with him. I had heard that this was the case and wanted to determine whether in fact this was their policy, and this is what he told me.

Q. And I believe you said that it was the policy of the First National Bank to compete very vigorously.

A. I said it would be their policy.

Q. Would be their policy if they got into Greeley to compete vigorously, is that correct?

A. Yes.

[1123] Q. Now, what is the basis of your knowledge of that?

A. Well, I have had many conversations with the officials of the First National Bancorporation—Mr. Alexander stated it to me as well as testimony in this record.

Q. Now, Dr. Baxter, you're an economist. Are you a member of the American Economic Association?

A. Yes.

Q. That organization has various classifications of economists, does it not?

A. In terms of the handbook they ask us to list our fields of specialty, yes.

Q. And how are you listed in that handbook? What field of specialty are you listed in that handbook?

A. I'm not exactly certain. I am certain that banking and monetary economics would be the first field. I am not sure whether I have listed—which I have listed, but there are various ones that overlap. You list three.

Q. Are you listed as an expert in industrial organization in the handbook?

A. I may have listed that as my third field, I'm not certain.

Q. Now, in connection with mergers and acquisitions, Dr. Baxter, do you feel that where you have one or two large organizations such as United and ABC in Greeley that it is competitively advantageous to allow a competitor in that [1124] market to merge with or become part of, through corporate acquisition, another large organization in order to catch up so to speak with the large firms in the market?

A. I'm not sure I understand that question. Could I ask that it be read back?

Mr. Metzger: Your Honor, may I suggest that in order to clarify it for the witness that we are talking about the catch-up argument from Bethelehem Steel case.

The Court: Thank you, Mr. Metzger.

Mr. Schoepke: Would you read the question back, Mr. Reporter.

(Question read by the reporter.)

Q. And I add to that, and compete better.

A. No, sir. I wouldn't say that that would be the reason that I would favor this particular merger or this particular acquisition. I would say that to take advantage of the economies of operation and to be an effective competitor in this market the larger resources that we have been talking about will enable them to do a better job, but I wouldn't say it would be because they have to catch up.

[1125] Q. Well, now, Mr. Metzger mentioned the Bethlehem Steel case, which was decided by Judge Weinfield, whom Mr. Metzger expresses great admiration for from time to time in his briefs. I would just like to again, not to discuss the law with you, but I would like to read part of that case and just ask you whether you agree or disagree with the observation. This is on Page 618. The citation is 168 Fed Supp 576.

> "The merger offers an incipient threat of setting into motion a chain reaction of further mergers by the other but less powerful companies in the steel industry. If there is logic to the defendants' contention that their joinder is justified to enable them, in their own language to offer 'challenging competition to United States Steel, which exercises dominant influence over the competitive conditions in the steel industry,' then the remaining large producers in the Big Twelve could with equal logic urge that they too be permitted to join forces and to concentrate their economic resources in order to give more effective competition to the enhanced Big Two, and so we reach a point of more intense concentration in an industry already highly concentrated, indeed, well in the direction of triopoly."

Do you agree or disagree with that statement, or do you have any comments you wish to make with regard to it.

A. Well, with regard to the steel industry, there is a [1126] good deal of justification for talking about very few producers nationwide.

There is very good justification for talking about concepts of economic concentration, and when one talks about a—if you are talking about a dozen producers or so and you are allowing two of the largest to get together, on equity grounds what you are saying is that some of the others should get together because the argument that certain producers by getting together will be able to deal

more effectively against the largest would imply that No. 7 and No. 8 and No. 4 would be allowed to get together so they too could do a better job, and that would probably lead to a much more concentrated situation in steel with much less effective competition than that industry has.

I think to imply that in banking you are talking about anything similar would be unfortunate, because we are talking here about an industry with many, many sellers. We are talking about relatively small markets, instead of national markets. We are talking about relatively low capital requirements and technology requirements as compared to the enormous requirements for entering the steel industry, so without pretending to be—not to say that these concepts are right or wrong, these concepts must be applied and considered in the context of what you are talking about, and I do not think that the standards that would apply to steel mean very much [1127] when applied to banking at all.

Q. All right——

THE COURT: Where were you reading from?

MR. SCHOEPKE: That's the Bethlehem Steel case.

THE COURT: These reporters have to transcribe this record and sometimes they need to go to the source.

MR. METZGER: 168 F Supp, Your Honor.

THE COURT: What page?

MR. SCHOEPKE: Page 618, I believe I mentioned. I will give it to them.

THE COURT: Of course, I don't see the value of taking these things, this language, out of context, and I mean it doesn't impress me, anyway. The law is what the law is. The fact that some judge has—and I certainly respect Weinfield very much—has given an expression in a particular context is not gospel, you know, and this is what I was criticizing last night.

You gentlemen are very sophisticated about this whole body of law, but you are so spooky you have got a bunch of dialectics here you have got to apply, and I am just not going to decide it this way, anyway, on that kind of a basis. I would say that the general thrust of the evidence here shows that First Bancorporation, for better or for worse, would probably not have formed or would not have taken on this merger if their branch banking effort had succeeded. This is

about the [1128] only way open to them in order to maintain their position probably. I mean, I think it is something we have to face and I don't think we ought to sidestep or dance around it. It is one of the things we ought to hit head on, I would say. If this is the case, why, that's it. But it would seem to me to be kind of an artificial basis for saying because in Bethlehem Steel this particular piece of language was used—not necessarily a decision, it is just an expression—that this must be or would follow axiomatically that any kind of a defensive acquisition is necessarily adverse to competition.

[1129] MR. SCHOEPKE: Well, Your Honor——

THE COURT: If you want to maintain it, that's your business, but you may have to maintain it in some higher court, unless it is reasonable and rational. That's what I am interested in.

MR. SCHOEPKE: If Your Honor please, the relevance of this is to simply determine whether the economic precepts which a particular witness on the stand applies in giving us the advantage of his expertise are the same which those of the courts in antitrust cases have applied, and it is simply for this reason that I am asking this witness whether or not he agrees with those particular standards. I think that's extremely important because I have gotten the feeling from some of the colloquy during the course of the case that there may be some feeling that this idea of countervailing power, this catch-up theory, has some validity, and I think I would be remiss if I didn't bring out some way, to the best of my——

THE COURT: I don't know whether it has or not.

MR. SCHEOPKE: This simply is not an acceptable argument under the antitrust laws, as the courts have developed them under Section 7. Once you accept the argument that the catch-up theory, the leap-frog theory——

THE COURT: Why didn't you start ten years ago then? I mean, I just don't—well, we will just see whether [1130] it has any value or not. Because another judge said it in the Bethlehem Steel case, as I say, isn't gospel to me. Judges say lots of things in the courts of opinions, you know.

MR. SCHOEPKE: Well, you mentioned that, but in antitrust cases, it is awfully hard to distinguish holdings from dicta.

THE COURT: Everything is gospel.

MR. SCHOEPKE: No, I think it all falls into place in a series of cases. Well, Your Honor, I believe the witness has indicated that he felt that Bethlehem Steel was concerned with steel and he thought that perhaps it might not apply to the full extent to banking.

May I just read him an excerpt from the Philadelphia case and ask him the same question, does he or does he not agree with it?

THE COURT: Okay.

Q. Dr. Baxter, this is from the Philadelphia case, 374 U.S. 321, which as you know, was the first bank merger case. On Page 370, the court says, "Second, it is suggested that the increased lending limit of the resulting bank will enable it to compete with the large out-of-state banks, particularly the New York banks, with very large loans. We reject this application of the concept of countervailing power," citing *Keefer-Stewart Company v. Seagram and Sons,* [1131] 340 U.S. 211. "If anti-competitive effects in one market could be justified by pro-competitive consequences in another, the logical upshot would be that every firm in an industry could, without violating Section 7, embark on a series of mergers that would make it in the end as large as the industry leader."

Do you agree or not agree with that language?

MR. METZGER: May I object to this line of inquiry, Your Honor, for this reason. It, as well as the previous question, is addressed to matters not raised by this witness or to the best of my recollection anywhere in this case by the defendants. The first argument was——

THE COURT: Never mind.

MR. METZGER: —catch-up——

THE COURT: I think that the language itself distinguishes it from our fact situation, because it speaks of competition in that market or countervailing influence in the market, doesn't it? As you read it, that's the way I heard it. Does it not?

MR. SCHOEPKE: The Court rejects the idea of countervailing power, and I would like to ask the witness whether or not he agrees.

[1132] THE COURT: In a different context, yes.

MR. SCHOEPKE: May he answer, Your Honor?

THE COURT: Yes. He can add to my answer.

THE WITNESS: Well, I think in Philadelphia and National, what they were saying there, what Mr. Justice Brennan was saying there was you can't weigh any procompetitive effect in New York or on a national market for big loans against what was judged by the court to be an anticompetitive effect in the commercial banking business in Philadelphia or the four-county market area that was found in that case.

What we're talking about here, a procompetitive effect in the Weld County market, against any alleged reduction in potential competition which as I have indicated I don't think exists. But, we're talking about the same market and balancing forces in that market. I don't think that Philadelphia, where we're talking about two banks which were across the street, which added up to over a billion dollars in resources and with an obvious direct competition with each other is necessarily applicable to what we are talking about here in Greeley.

Q. Now, you just used the term where we are talking about balancing forces in Greeley. What did you mean by that?

A. Well, I was saying here—we believe—I believe that there are very strong procompetitive effects to this acquisition, that the First National Bancorporation in the Greeley market will be a more effective competitor for the [1133] business that is done there and what I was saying——

The Department of Justice has alleged an anticompetitive effect through the potential competition area. I think it would be appropriate for the Court to weigh the procompetitive effects that the Court finds with anticompetitive effects that the Court might find and see whether or not the procompetitive effects do indeed outweigh the anticompetitive effects if any. But, this is one particular market that would be established and one could always look at different effects in a given market. This is not balancing one firm against the other. I didn't mean to imply that it was.

Q. Do you think this merger or this acquisition of the First National Bank of Greeley is absolutely necessary for First National to accomplish these procompetitive effects as you described them?

A. Yes, I think that the only meaningful way that they

can participate in the Weld County market in the commercial and wholesale banking end of the business and in the agricultural lending, in the areas that they are most effective and efficient and have the most to offer and contribute, is through this acquisition.

Q. You don't think they could accomplish it by independent entry?

A. No, I do not, not in any reasonably foreseeable time.

[1134] Q. Well, then, from that and from your previous testimony I take it that your test for potential competition would be probability of entry, is that correct?

A. Well, I think it is—one has to look at whether it is a reasonable thing as a business judgment for the banks to do and one also has to look at whether they could be allowed to do this in a regulatory environment and looking at both of these things independently it doesn't seem to me that they could have a procompetitive impact in the commerical end of the business that they are most interested in developing absent this acquisition. In that sense probability is important, of course.

Q. Have you ever written any articles on the question of the significance of probability of entry as regards potential competition?

A. I may have mentioned this issue in some of my writings. I honestly can't tell you.

Q. And on this problem of countervailing power that we have discussed, have you ever written any articles on that?

A. Again, that is an issue that I may have mentioned in some of my writings but I am not aware of any direct discussion on it.

Q. Have you ever written any articles on the question of the Wings theory as we have been discussing it in this case standing on the edge of the market?

[1135] A. Not that I recall.

Q. Do you think that the First National Bancorporation exercises any influence simply by being close to the Greeley market?

A. No, I do not.

Q. I'd like to call your attention to Defendants' Exhibit No. 40 and 41, if I may. Do you have them handy?

A. Yes, I do, Mr. Schoepke.

Q. These are tables of population per banking office.

A. Yes.

Q. And I would just like to ask you—is that really a very reliable figure to use in analysis? Wouldn't a lot depend on the economic condition of the population? In other words, wouldn't the population per banking office in the town of Erie that we have heard about be a lot different? Wouldn't its significance be a lot different than the population banking office, let's say in Cherry Hills, which is a rather prosperous section of the City of Denver?

A. Yes, I think that there would be some difference but basically of course across the board I think this is a pretty good measure of the number of alternatives that are available and of the convenience of banking to the consuming public, the consumers of banking services. So I think this is a very meaningful measure. I don't believe I implied that it always tells 100 percent of the story. Yet, it is something [1136] that the regulatory authorities look at very carefully and it is something that I as an economist would judge to be quite important.

Q. You wouldn't rely on this alone though, would you?

A. No.

Q. Now, when you got onto the subject of correspondent banking, you testified, I believe, that you felt correspondent banking system was necessary, if my notes are correct. You indicated that correspondent banking system was necessitated by the inability of the larger banks to get into the outlying community and the needs of the banks in the outlying communities for the services of the larger institutions. Is that correct?

A. Yes, and I would add the banks and their customers for the services of the larger institutions. Because, correspondent banking is after all a method whereby the larger banks give services, not primarily to other banks but in terms of the customers of these other banks.

Q. Now, I'd like to read you this statement, Doctor, and ask you if you agree or not.

THE COURT: Where it is from?

MR. SCHOEPKE: This is from William B. Camp, Comptroller of the Currency, in an article on correspondent banking, supplement to the American Bankers——

THE COURT: Do you accept this as an authority?

[1137] THE WITNESS: Well, Mr. Camp has made many public statements which I agree with and some I am sure

which I don't. And, he is the Comptroller of the Currency and the administrator of National Banks.

THE COURT: Very well. You may proceed.

Q. "Correspondent banking is a function almost as old as commercial banking itself and through the years has become the capstone of the commercial banking system."

Do you agree with that?

A. No, I don't.

Q. In what way?

A. I'm not sure what capstone means. I agree with the first half of the statement.

Q. Well, perhaps you will agree with this. This is further on in Mr. Camp's article.

> "In my opinion, the correspondent system has to a significant degree filled the gap between the large banks and the small and medium-sized banks. It has provided the critical financial muscle of much of our economic progress and I am confident that the system will respond to the challenges of the future as it has with those of the past."

Do you agree with Mr. Camp's observations?

A. Well, I agree in part with that statement. I am not sure that I would state it quite that way.

[1138] Q. How would you state it?

A. Well, I agree that correspondent banking, if one wants to use that term, I agree that relationships of banks with others; that overlines, that check clearing services provided by some banks, that financial advisory services provided separately by some banks for others, that all of these things serve a useful economic function. They are products like any other product. They are sold and some banks sell them and other banks buy them, and they must be worth their price because they have existed.

In a banking system whereby the larger financial institutions cannot be directly in smaller communities and yet you need large credits around smaller communities and you need certain investment advisory services and the like, big city banks are able to provide this. And in that sense correspondent banking has been useful and has been important.

In states such as California where there is branch banking throughout the state, the need for many services that

are provided elsewhere by correspondents is not present and another system or some functions for some banks, is able to replace a correspondent banking system, and I think a—a problem on balance, they do a better job, but that is not necessarily directly responsive to your question.

Q. Now, I believe that you said that as a competitive device the correspondent banking system insofar as it dealt [1139] with the relationship between the banks involved directly as the correspondents was basically noncompetitive. Was that your testimony?

A. Yes, there are anticompetitive aspects of a correspondent banking system.

[1140] Q. Well, now, does that apply to the banks who offer correspondent services?

A. I'm not sure I understand your question.

Q. Well, let me be more precise. Do you think that the six banks in Denver that offer correspondent services are in competition for correspondent banking business?

A. Well, they're in competition for the specific services that they sell. As I indicated in my testimony, I don't use the term correspondent banking business to imply something that is homogeneous. I think they are in competition with each other and with many banks outside of Denver and outside of Colorado to provide overlines, to do check clearing services, to do government bond type transactions, and the like, and I think that they do compete hard against each other and against many banks outside of Denver to sell these services because they are able to provide something that people want to purchase. I was not implying that.

Q. Well, when you were discussing correspondent banking you rejected this package concept, did you not?

A. Yes.

Q. And you indicated that in your view correspondent banking was just a series of different things that could be obtained from different sources and really didn't constitute a line of commerce in your judgment?

A. That's correct.

[1141] Q. Didn't you apply basically the same analysis that you applied in your conclusion that commercial banking as such was not a line of commerce?

A. No, I think it's a different sort of analysis. I think that my analysis of commercial banking as a line of commerce, I took specific services, some of which are offered only by

commercial banks, namely, the demand deposit function, and I said for the demand deposit function, that it is a line of commerce. Commercial banking is a line of commerce and if we can find anticompetitive effects in demand deposit functions then one would use the line of commerce as commercial banking. I said when one looks at all things that commercial banking—if one is trying to make a reasonable appraisal of what constitutes anticompetitive effect of merger or acquisition, it is not fair to say for the real estate lending function that commercial banking is a line of commerce.

And if one finds an anticompetitive effect for the real estate lending function by using a commercial banking line of commerce, I think one is engaging in extremely poor analysis since other organizations compete with commercial banks for the issuance and offering of real estate loans.

What I am saying here in correspondent banking is that you have a whole group of services which are sold to customers of banks offering these services and in some services they are not sold exclusively to correspondent banks. They are [1142] sold lending services.

So we're talking about lending.

Q. Well, aren't you rejecting the cluster idea of correspondent banking as a line of commerce?

A. In saying that there is nothing unique except for the federal funds transactions which we talked about, but there is nothing unique about what is offered to correspondent banks.

Q. Not even a cluster?

A. No, I don't think——

Q. You don't think the cluster services offered by correspondent banks is a uniqueness?

A. I don't agree that there is a cluster of services offered.

Mr. Metzger: Your Honor, I think we are engaging in semantics at the moment and not analysis. Anything is a cluster. If I pick up a group of things from this table here, I've got a cluster. That doesn't mean that there is anything unique except nobody else has the same cluster, and I don't think that aids the development of what this witness has to contribute to this case.

The Court: Overruled.

Q. Dr. Baxter, I'd like to read you one excerpt—First

off, are you familiar with the American Bankers Association?

A. Yes.

[1143] Q. And you recognize them as an authoritative source on subjects concerning banking, whether or not you agree with them?

A. Well, I don't know what you mean by the association as a source of information.

THE COURT: Their publications.

Q. Their publications.

A. The American Bankers is a daily banking newspaper. I subscribe to it. Thay have a monthly publication.

Q. If I may, let me just read a section from the report by the American Bankers Association on commercial banking industry.

THE COURT: Dated what?

MR. SCHOEPKE: By the Commission on Money and Credit, published by Prentice-Hall, dated 1962, and this is from Page 273 of that publication:

> "The size and number of correspondent bank balances depend on the services which the country bank desires from its correspondents. City correspondents require of the country bank only sufficient balances to earn enough to cover the cost of services rendered by them plus a reasonable profit on the account. A city correspondent is not going to turn away excess deposits left with it, and country banks sometimes let these accounts rise to levels which are not necessary for [1144] the services demanded, especially when loan demands are slack and deposits are holding up well. Such excess balances can be used to provide liquidity to meet subsequent losses of funds. Normally, however, balances are held at levels commensurate with services rendered and offer only a very limited source of liquidity."

I would like to ask you if you agree or disagree with that statement?

THE COURT: Did the reporter get all that?

THE REPORTER: Yes, Your Honor.

THE COURT: Very good.

MR. METZGER: May I ask what part of the statement

we're talking about? There are about five concepts there.

THE COURT: Well, I suppose he is confronting him with the entire statement. He has not added the author, though. That's one objection I would have. In other words, if you're going to qualify this as an authority, I think the least you could do is tell him who authored it. I mean, so he can say——

MR. SCHOEPKE: The American Bankers Association, the commercial banking industry, commission on money and credit, that's the only author.

MR. METZGER: Your Honor, I was aware the committee had produced some terrible things but now they are accused of [1145] writing.

THE COURT: Is this a report of some kind?

MR. SCHOEPKE: Yes, it is an official report by the American Bankers Association, Your Honor.

THE COURT: Do you understand what he is asking you?

MR. SCHOEPKE: I'll be glad to give him this statement.

THE WITNESS: I'm familiar with the particular volume and I would like to have it in front of me as I comment on it.

THE COURT: I think it would be helpful if you could see what it looks like. Sometimes this gives it a little more——

Q. I might just say that specifically in context the last sentence is the one that I am inquiring about. "Normally, however, balances are held at levels commensurate with services rendered and offer only a very limited source of liquidity."

Would you care to examine and comment on that statement in the context with everything else I read to you?

[1146] A. Yes, I think I can comment on the entire statement, which I think is generally a valid one. What it implies to me is that most banks which are buying one or more services from a correspondent keep a balance with that correspondent, as we have indicated throughout the testimony in this case, to pay for—as one way of paying for services. Sometimes they are direct charge items and are paid for in cash. Sometimes they are paid for in balances. All this is saying, really, is that some country correspondents tend to keep more in their correspondent accounts than occasionally they really have to. They use it just as any of us may keep in our checking account more than we really have to because we are not managing the funds with a sharp pencil,

but on balance most of them do manage their funds properly, get account analyses for the precise services that they are purchasing or service, and therefore keep their balances commensurate with what they are purchasing, to pay for what they are purchasing. I would add that many correspondent accounts are almost completely dormant, as one of the sentences in there implies, and no service is actually being purchased at that time, whereas some accounts are very active.

Q. Well, may I ask you, the last sentence, which is the one that I directed your immediate attention to, says "Normally, however, balances are held at levels commensurate with services rendered." Do your agree or disagree with that [1147] statement?

A. I don't think you can generalize as much as that to say that normally this is the case. I think that these accounts are analyzed for profitability. If they are not profitable in terms of what service or services a bank is buying, then each service is analyzed as given, and all this is really saying is that many balances are not higher than they have to be and are not overly profitable for the banks that are offering them.

Q. Then you disagree with the word "normally," is that it?

A. I think "normally" is a difficult word to use in this context.

Q. Now, in your testimony Mr. Metzger asked you about correspondent balances of the First National Bank of Denver and indicated—or you indicated that 30 percent of the correspondent balances were balances from banks outside of Colorado. Now, as a matter of pure arithmetic, that would mean that 70 percent of the First National Bank of Denver's correspondent balances are held from banks within Colorado?

Mr. Metzger: Just for the record, Your Honor, the statement was 35 or 40 percent.

Mr. Schoepke: May I have a moment? I think there is some problem on this, Your Honor.

[1148] The Court: Okay.

Mr. Schoepke: Could I have Exhibit 202, Mr. Kerr, please?

Q. I show you, Dr. Baxter, Plaintiff's Exhibit Number 202, a tabulation of correspondent deposits held by First

National Bank of Denver as of December 31, 1969, which indicates that as of that date that 69.1 percent of the correspondent balances held were from banks within Colorado. Would that not indicate to you that Colorado was at least a submarket for correspondent services?

A. No, it would not necessarily.

Q. How much would they have to get from banks within Colorado in your judgment in order to constitute an appropriate geographic submarket within which to measure the competitive consequences of vertical integration involved in this case?

A. I don't think one can state a percentage, because I agree with the testimony and believe that I said so myself yesterday, that the balance itself is not necessarily a very good measure of what's being offered and what is being sold. Some of these balances are dormant and a lot of services may be provided. Other of the balances may be extremely active and after cash items and process of collection are considered, there may be hardly anything left, so I don't think—I think that any percentage, if I were to say 80 or 90 percent of that particular balance figure, I would not [1149] really be expressing a very meaningful relationship in terms of what may be done.

Q. Dr. Baxter, I would like to show you the correspondent banking issue of the "American Banker," which you have just testified you are familiar with and recognize as an authoritative publication in the banking business.

MR. METZGER: May we correct the record to say that there is a Correspondent Banking Annual Supplement in one of the issues of this daily magazine or daily newspaper?

MR. SCHOEPKE: Well, I am about to complete the identification.

THE COURT: Well, does he embrace the whole newspaper to be authoritative, every day, everything in it?

MR. SCHOEPKE: Well, I wasn't going to go into that, Your Honor. I just wanted to show him a listing from it and question him on it.

Q. Do you recognize the——

THE COURT: Well, I think you can't—it's my understanding of the law of witnesses that you can't impeach a witness by confronting him with the publication unless he accepts the material as authoritative. In other words, just because someone has said it doesn't make it so. If he agrees

that it is right, then there is some basis for comparison, isn't that correct?

MR. SCHOEPKE: Yes, Your Honor, and I was laying a [1150] foundation for that.

THE COURT: See if he will embrace it, first.

MR. SCHOEPKE: All right.

Q. I call your attention, Dr. Baxter, to the correspondent banking section of the "American Banker," which is dated December 18, 1970, and on it it has a list of the largest bankers' banks, ranked by size of correspondent balances. Do you know why banks are listed by order of size of correspondent balances?

A. It is a way to list banks to classify them.

MR. METZGER: May I ask if there is any other way, that you know of?

THE COURT: You can get back to it. It is not proper.

MR. METZGER: Yes, sir.

Q. Well, do you agree that's a proper way to list them, to list correspondent banks in the order of size?

A. A way to list correspondent banks.

Q. Would you give any other way of listing them?

A. One could list them by the amount of overlines, of participation loans that they grant. One could list them by the number of checks that they clear. One could list them by the net income of the departments, if one—of course, that would be information that would be not public and not easily obtained, but I could name several.

[1151] Q. Well, now, this particular listing is in terms of the size of the correspondent balances held by the banks starting from the biggest down as far as they go to the smallest.

A. Yes.

THE COURT: The sum of all of the accounts?

MR. SCHOEPKE: Of the largest and then the second largest and so forth, the size of their correspondent balance accounts.

* * * * *

[1152] Q. Do you think that's a reasonable way of classifying banks in the correspondent business?

A. No more and no less reasonable than some of the other ways. It depends on what type of analysis one is

going to conduct of this. I have indicated why the deposit balances could be misleading, and because they could be misleading I don't think, if this were employed for purposes of saying who is the largest or who does the most correspondent business that this is necessarily a meaningful way to do it. You could list them alphabetically, just as well.

Q. So you still do not agree that the size of correspondent balances is a good proxy of the amount of correspondent business conducted by banks who are in the correspondent banking business?

[1153] A. It is not necessarily a good proxy, no.

MR. SCHOEPKE: That's all I have in mind. Thank you.

May I have a moment, Your Honor?

THE COURT: Surely.

MR. SCHOEPKE: Your Honor, we have no further questions of this witness.

THE COURT: All right.

REDIRECT EXAMINATION

By MR. METZGER:

Q. Now, Dr. Baxter, let us get to what your opinion is on this last subject rather than around the barn. Do you believe that average balances as distinguished from net balances is an adequate measure of activity in a correspondent bank balance?

A. No, I do not.

Q. Do you believe that it is an adequate measure of profitability of that bank balance?

A. No, I do not.

Q. Is the bank balance in question in this case relevant to that conclusion on your part, the First National of Greeley's balances?

A. The analysis of the large proportion of that balance which is in uncollected items revealed that looking at the size of the balances initially might vastly overstate the profitability of the account.

[1154] Q. Doctor, yesterday on cross-examination you were read a quotation out of context from the Philadelphia National Bank case.

MR. SCHOEPKES I object to out of context. I gave the whole thing to him.

THE COURT: Sustained.

MR. METZGER: I should like to read another statement out of context.

MR. SCHOEPKE: Object.

THE COURT: Sustained.

Q. (Continued) From another opinion of a regulatory agency, the 1960 Historical Analysis of Banking said on this subject: "With the experience of thousands of bank failures between 1920 and 1934 attributed in many instances to weak or uncapitalized banks in population centers unable to support them, bank chartering authorities were alert to prevent a repetition of the overbank situation of the early 1920s. While it may to some persons now seem a desirable situation to have, as in 1921, more than 30,000 banks with open doors for borrowers and depositors throughout the United States, bank supervisors and chartering authorities of the 1930s and 1940s knew that many of those banks closed their doors with great losses and hardship to their depositors and would determine that this should not happen again."

Is this a valid representation of the legitimate [1155] interest of the regulatory agencies in chartering of banks?

A. Indeed, it is.

Q. You were read a statement yesterday with regard to triggering as an anti-competitive eventuality of given particular mergers. Relating to the acquisitions of this particular bank, the Federal Reserve Board in its opinion of April 1, 1971, stated: "Insofar as any triggering effect which approval of the application may have, each subsequent application also must receive the approval of the Board. Presumably one of the reasons for the requirement of administrative approval of individual cases rather than the establishment of firm legislative guidelines is to permit the recognition of distinctions which may exist among cases which would otherwise be grouped in proscribed or permitted categories. Each application should be analyzed on the basis of the competitive structure of the market and other facts existing at the time of the Board consideration of the matter."

Do you agree that this is a fair response to the triggering arguments that you were subjected to yesterday?

A. I agree with that completely.

Q. Do you agree that the board has, with relation to the

First National Bancorporation of Colorado, fairly exercised those responsibilities in granting some and denying other of our applications?

[1156] A. Yes.

Q. Do you agree that this is something we ought to consider in determining whether or not there would be a triggering effect?

A. Yes.

Q. Do you believe that the Justice Department's ability to stop any merger in banking and unique to this industry alone is relevant to the question of whether there is any triggering effect?

A. Yes, I do, and I have so testified yesterday.

Q. It was suggested to you yesterday that there might be some untoward effects because the resources of the Bancorporation might be used in Greeley to unfairly pry loose a segment of that market.

Comparing resources of the First National Bancorporation with those of Western Bancorporation, do you believe that we are better able than they to accomplish this end?

A. Certainly not.

Q. Do you believe that there has been any evidence in this state of utilization of resources improperly?

A. No evidence whatsoever.

Q. The suggestion was made in cross-examination yesterday that there is no effective competition with State Bank now by the First National of Greeley.

[1157] What kind of a bank was the State Bank before it converted?

A. It was an industrial bank which converted to commercial bank status in approximately 1965.

Q. And what does an industrial bank do?

A. Essentially make small consumer loans and accepts small consumer deposits.

Q. Has that character of that bank substantially changed in the intervening years?

A. No, it has not.

[1158] Q. So that insofar as it represents the consumer lending and consumer depository on saving of funds, it does compete in that market, does it not?

A. Yes, very much so, as I believe I also testified. It is able to compete for the service for the range of services it offers.

Q. And is this consumer lending an area in which the First National Bank of Greeley has heretofore been somewhat weak?

A. Its proportion of loans to individuals and consumer loans is very low, relative to the other banks in the area, and they have been weak in it, yes.

Q. You addressed yourself yesterday to the question of industrial organization and its applicability as to banking. I don't believe that I was entirely clear as to your conclusion as to the general applicability of the industrial organization art to commercial banking.

A. The same standards which are employed to analyze mergers and acquisitions in other industries such as steel, which we mentioned this morning, cannot possibly be applied directly to banking. What I suggested yesterday—some of the concepts as a basic starting point are relevant, but when we look at the specific markets that are served, banking markets being essentially local in nature, we must look at the number of competitors which is reasonable and consistent [1159] with the economies of scale available in the industry. We must look at the type of services offered in these reasonable market areas.

And, utilizing all these factors including the competition from other than banks for certain types of services offered, arrive at a judgment of what is reasonable and what is not reasonable in commercial banking. You certainly cannot take any general industrial standards, any general industrial trends and apply them to banking.

Q. Then applying that factor specifically to this case and to this market, is Greeley a highly concentrated banking market in terms of banking?

A. Absolutely not.

Q. Let me ask you a stupid question, Doctor, and I apologize for it before I ask it.

How many steel companies are there in Greeley; basic raw steel manufacturers?

THE COURT: If you know.

A. I don't believe there are any. I didn't come across any in my travels.

MR. METZGER: I apologized for that question in advance.

Q. Correspondent banking you suggested yesterday—that there are elements of convenience for Denver banks

or the Federal Reserve Bank in Denver for I believe you addressed [1160] yourself to that question on check clearing, is that correct?

A. Yes.

Q. Can Colorado banks clear checks elsewhere in Colorado?

A. Yes, indeed they can.

Q. With the same degree of convenience?

A. With the same degree of convenience depending on their location and the location of the checks that are being cleared.

Q. So a bank ten miles outside of Denver would be more likely to go to Denver and a bank ten miles outside of Pueblo or Colorado Springs or Fort Collins or Grand Junction or—would be more inclined to go there? Is that what you're saying?

A. Yes.

Q. Do you believe that there is a distinction between horizontal mergers on the question of the catch-up argument and mergers where there is no competition between the affiliating organizations?

A. I think there is a major distinction between a case where you have direct competition and a case where you have potential competition.

Q. On the questions of the Wings impact—I think we have covered this but I would like to bring it up just once more. Do you believe from the evidence in this case and from your own inquiries that the First National Bank of Denver [1161] has been on the Wings of the banks in Greeley?

A. No, I do not.

Q. Do you believe that it is on the edge of the market any more than any other group of entrepreneurs in the state might be on the edge of the market?

A. Not any more than that.

Q. When you addressed yourself to the article by Mr. Camp on correspondent banking, did you note who Mr. Camp's audience was at that time?

A. No, I didn't, but I assumed it was a convention, a bankers convention.

MR. METZGER: What kind of a convention, Mr. Schoepke?

Q. (By Mr. Metzger) I believe that Mr. Camp was addressing the correspondent banking representatives of—

at their special annual meeting. Do you think that is a relevant consideration as to the import to give his statement?

A. Yes, I do.

MR. METZGER: No further questions. Thank you.

RECROSS-EXAMINATION

By MR. SCHOEPKE:

Q. You were discussing a moment ago the wings theory and you expressed the view that you did not feel that the First National Bancorporation was any more significant in the wings than any other banking organization in the state. Was [1162] that about it?

A. No, Mr. Metzger asked me about any other group of entrepreneurs who might be able to charter a new bank in Greeley, and I would include those together with other banking organizations in making that statement.

Q. I would like to show you Plaintiff's Exhibit No. 21, and ask you if on the basis of that exhibit do you consider banking in the City of Denver to be concentrated?

A. No, I do not.

Q. And on the basis of this particular exhibit among the banking organizations capable of entering Greeley, would you not consider the First of Denver, as the largest, as being the most capable?

A. No, not necessarily. This particular exhibit lists five banks and we know that at the present time as part of the Western Bancorporation, American cannot enter as long as it is a part of the Western Bancorporation and United is already in there. But, Colorado National, of these five, is just as likely. So, size would make no difference.

Q. Size would make no difference whatever even though Colorado National Bank is about—maybe a little bit more than half the size of the First National Bank of Denver? That would not influence your judgment on relative capabilities of possible entry or power on the wings?

A. Absolutely not.

[1163] Q. Now, just one more question. Isn't it a fact, Dr. Baxter, that antitrust cases do measure vertical foreclosures in terms of sales or profits—I'm sorry, rather than profits?

Perhaps I better withdraw that question and read it again.

Is it not a fact that antitrust cases that measure vertical foreclosure in terms of sales rather than profits?

A. I don't know that one can make this as an absolute generalization. Sometimes sales are used but I would hasten that I don't think that correspondent balances represent sales in this market, that they in any way imply what's being sold.

MR. SCHOEPKE: No further questions.

RE-REDIRECT EXAMINATION

By MR. METZGER:

Q. Doctor, assuming it took a quarter of a million dollars for one banker to open up a bank in Greeley, would it make any difference if the potential entrepreneurs who might enter there had 50 million or 20 million or 10 million or one million?

A. No, it wouldn't make any difference.

Q. And you were asked whether or not vertical foreclosure is measured by sales. Are average balances a measure of the quote sales of offerers of correspondent services?

A. I just suggested they are not.

Q. And to nail this particular point down finally, is [1164] vertical foreclosure if such there be of the First National Bank of Greeley, of such a size as to constitute a foreclosure in any meaningful sense of any competitor of the First National Bank of Denver?

A. It most certainly is not.

MR. METZGER: No further questions.

MR. SCHOEPKE: No further questions.

(Witness excused.)

MR. METZGER: May it please the Court, the defense rests.

THE COURT: Very well.

MR. SCHOEPKE: Your Honor, may we just see what the schedule of our rebuttal witnesses is? Some of them have transportation problems and we would like to put them on to accommodate them.

Perhaps if we could take a short recess——

THE COURT: Surely, you let us know when you are ready to proceed.

(Whereupon, the trial recessed at 10:33 a.m.)

[1165] (Following a recess, the Court reconvened at 10:55 o'clock a.m.)

MR. BRENAN: Plaintiff calls as its first rebuttal witness Mr. Dale Hinman.

DALE HINMAN,

called as a witness in rebuttal by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: You have already been sworn, Mr. Hinman. Just take the witness chair. You are the same Dale Hinman who testified the other day?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

By MR. BRENAN:

Q. What organization are you connected with, Mr. Hinman?

A. I am President of the Greeley National Bank.

* * * * *

[1168] THE COURT: Who are your correspondents, by the way?

THE WITNESS: You want the full list, sir? Our principal correspondents in the Denver area are the First National Bank of Denver, the United Bank of Denver and the Central Bank and Trust Company of Denver. We also have correspondents in New York, Chicago, Kansas City, Omaha——

THE COURT: Yes. Well, I wondered what the correspondent bank is in Denver. Is the First your main correspondent in Denver?

THE WITNESS: Yes, sir.

MR. BRENAN: No further questions.

THE COURT: Is yours the lead bank in this other holding company, the associated banks?

THE WITNESS: There are four lead banks in the other holding company referred to. There is no one single lead bank. In size, if you go that way, the First National Bank of Colorado Springs is the largest in size.

MR. METZGER: We are all together.

CROSS-EXAMINATION

[1169]

By MR. METZGER:

Q. Mr. Hinman, how many full-time trust officers do you have in your bank?

A. Five.

Q. Mr. Hinman, if this affiliation goes through, will the First National Bank of Denver continue to be your prime correspondent in Denver?

MR. BRENAN: Your Honor, that's completely outside of the scope.

MR. METZGER: We were asked who his prime correspondents were.

THE COURT: I asked that.

MR. METZGER: Well, it is there.

THE COURT: Okay.

Do you know? Do you know whether you will continue with the First?

A. I have no immediate intentions of changing at the present time. We have to see what may come up at that time. I can't see into the future.

Q. But as of now, you have no such intention?

A. No.

* * * * *

[1195] MR. SCHOEPKE: Government calls Mr. Harry Bloom.

HARRY BLOOM,

called as a witness in rebuttal by the Government, having been previously duly sworn, further testified as follows:

THE COURT: You have already been sworn?

THE WITNESS: Yes.

THE COURT: You are the same Harry Bloom who has previously testified, and I guess you are still chairman of the State Banking Commission, is that right?

THE WITNESS: Yes.

* * * * *

[1199]

DIRECT EXAMINATION

By MR. SCHOEPKE:

Q. Mr. Bloom, as Banking Commissioner, you are aware that there have been two denials of applications for new banks in Boulder, is that correct?

A. Yes.

Q. Now, which was the first denial?

A. I believe it was the Boulder Valley Bank was the first one and the Table Mesa was the second one, I believe.

Q. Do you recall what the service area was that these banks were intended to serve at the time application was made for their charters to you?

A. The Boulder Valley application was in the area of the Longmont diagonal. The Table Mesa Bank was over on the Table Mesa in Table Mesa Shopping Center, which is a different service area entirely.

Q. Now, since I am unfamiliar with Boulder——

THE COURT: Well, these are residential areas, are they not?

[1200] THE WITNESS: The Table Mesa area is primarily residential, yes. The other does have some commercial on the Longmont diagonal.

THE COURT: But it is also a new residential area as well, isn't it, the Longmont——

THE WITNESS: There are some developments there, yes, residential.

Q. Now, do the service areas of these banks as the applications were presented to you—did they encompass the entire City of Boulder or just these particular localized areas that you have described?

A. As I recall, they showed primary service areas that were more or less localized, but the secondary service area, the overall service area, would encompass all of Boulder.

Q. Now, were there any other banks in any of these areas at the time the applications were pending?

A. There were no banks in the Table Mesa area, although the Board had granted approval of an existing bank to move into that area. The nearest bank to the Boulder—the other application, the nearest bank was the Boulder National Bank to that location.

Q. Well, now, on the Table Mesa one, where a bank was —did you say about to move or had been granted permission to move?

A. The Board had authorized an existing bank to move [1201] into the Table Mesa area.

Q. Did that authorization have anything to do with the Board's decision with regard to whether or not to allow a new bank to establish themselves in that area?

A. Would you repeat that question again?

THE COURT: Was that the influential item that caused you to deny this?

THE WITNESS: Well, the denial of the Table Mesa application—this was one of the factors, that we had authorized the bank to move into the area.

Q. And you felt that two banks might be too many in that particular area, isn't that correct?

A. Yes.

Q. Now, has the Bank Board ever indicated since that time that it would reject any and all applications that might be made for new banks in the City of Boulder?

A. No.

Q. And if an application for a new bank in Boulder were presented to you, would you just return it and say, "We don't think there is room for a new bank in Boulder"?

A. No, sir.

Q. You wouldn't be permitted to do that by law, would you?

A. No, we would have to process it.

Q. Are there any applications pending at the present [1202] moment for a new bank in Boulder?

A. Yes, sir, one.

Q. And you are currently processing it?

A. It is in—being processed by our office, yes.

Q. Now, turning to Greeley, has your office ever announced, within the last year or five years or in six months or one month, has it ever announced that no more applications for new banks in the City of Greeley or Greeley area would—that no new charters would be granted in those areas and that nobody need apply?

A. No, we haven't.

Q. Do you have any applications pending up there at the moment?

A. No, we don't.

MR. SCHOEPKE: That's all.

CROSS-EXAMINATION

By MR. METZGER:

Q. Have you determined to grant the application pending in Boulder?

A. No.

denial, the State Banking Commission's denial, of the appli-

Q. I should like to read to you, Mr. Bloom, from your cation of the Boulder Valley Bank in 1970, two statements. One: "The Boulder community presently appears to be well served by existing financial institutions."

[1203] Do you repudiate this statement, sir?

A. No.

Q. "It could be argued that additional banks conveniently located will further the interests of the depositing public. A bank situated on every block would no doubt be desirable from the standpoint of some depositors and prospective customers. On the other hand, we do not feel that such a chartering procedure would be in keeping with the trust imposed upon this Board by the Colorado General Assembly."

Do you repudiate that statement?

A. No, sir.

Q. Mr. Bloom, has your office recently considered an application for a new bank at Northglenn, a suburb of Denver?

A. Yes, sir.

Q. And the population of Northglenn is about 30,000, I believe?

A. I believe that's in the——

Q. And there is one bank serving that area now?

A. Yes.

Q. And what was the result of the Board's actions with regard to this Northglenn application?

A. It was denied.

MR. METZGER: Thank you, sir. No further questions.

REDIRECT EXAMINATION

By MR. SCHOEPKE:

[1204] Q. Mr. Bloom, with regard to that portion of the opinion saying that you felt Boulder—banking was ade-

quate in Boulder, were you directing that remark at any particular point in time?

A. Well, the order was based on the facts in the record at that particular hearing.

Q. At that moment?

A. Yes.

Q. Would you decline to change your mind if there were growth factors that you considered important?

A. Would I decline to change my mind?

Q. Yes, in other words, is this a—does this speak forever in the future?

A. No, sir.

Q. Is the Boulder area growing?

A. It seems to be.

MR. SCHOEPKE: No further questions.

RECROSS-EXAMINATION

By MR. METZGER:

Q. One question, Mr. Bloom. You are, I think, the only lifetime executive in the state, are you not?

A. I think so.

Q. Your appointment is for life?

A. Yes, sir.

* * * * *

[1205]

WALTER C. EMERY,

[1206] called as a witness in rebuttal by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: Take the witness stand and state your name, address and occupation.

[1207] THE WITNESS: My name is Walter C. Emery. I live at 2901 East Cedar Avenue, and I am president of the Bank of Denver, 1534 California, Denver, Colorado.

DIRECT EXAMINATION

By MR. MALASKY:

Q. Mr. Emery, how long have you been president of the Bank of Denver?

A. Eleven years.

* * * * *

Q. Mr. Emery, Defendants' Exhibit 16 in evidence indicates that you have correspondent bank relationships in Kansas City, Chicago, San Francisco, Los Angeles and New York. Would you explain the nature of these correspondent relationships?

A. If you mean what do I use them for?

Q. That's right.

A. I might add we also have a correspondent bank in [1208] Dallas.

Q. And that's in addition to Denver?

A. Yes. Do you wish to know what I use the correspondent banks for in Denver, or in all of them?

Q. In the other cities.

A. In New York we use the Chase Manhattan for purchase and holding of certain securities, purchase and sale of federal funds and of clearance of certain special items, transfers of funds and foreign exchange.

Q. How about in Kansas City?

A. Kansas City we use the banks there occasionally for collection of certain checks.

Q. And Chicago? How many do you have in Chicago?

A. We have two in Chicago, the American National and the First National, and we use those for the same purpose.

• • • • •

[1210] Q. Mr. Emery, is your bank a member of the Federal Reserve System?

A. No, it is not.

Q. How is your bank classified?

A. It's a state nonmember bank.

Q. Now, as such, are the facilities—Are the facilities to your knowledge of the Federal Reserve Bank—branch bank here in Denver available to the same extent that they are to the national bank members of the Federal Reserve System?

A. They are not.

Q. Does this mean, Mr. Emery, that you depend quite heavily on your correspondent relationships for your check clearing and other items?

A. We do.

Q. And whom do you depend on primarily for those full-range——

A. The Central Bank and Trust Company.

Q. Is that for your full-range of correspondent services?

A. Yes.

Q. In your opinion, are any of the banks in any of the other cities to which you refer substitutable for the full [1211] range of correspondent services for your Denver correspondent?

MR. SCHWARZ: That's beyond the limitations that Your Honor has set.

THE COURT: What's he going to testify to?

MR. MALASKY: "No."

THE COURT: Okay.

All right.

THE WITNESS: They are not.

MR. MALASKY: No more questions.

CROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. Emery, I heard you refer to the so-called services you get or Mr. Malasky referred to them, the services you get from Central as the full line of correspondent services. Isn't it true that you told me just before you went on the stand here in the hall that so far as federal funds for example is concerned you do most of your federal fund trading in California and on the East Coast because it is easier and you get better service?

A. No, I did not quite say that, Mr. Schwarz. I said that we trade, buy and sell funds presently with the Chase Manhattan or with the Bank of California because at the moment we have been able to get better prices. We do sell federal funds through the Central Bank. We have sold them through other banks here in Denver and this changes from time to time. [1212] We try to sell our funds where we can get the best price.

* * * * *

[1213] Q. May I repeat my question, Mr. Emery. Were you the chairman of a small group that wrote a minority report and recruited other bankers in the state to oppose branch banking in the state?

A. I wasn't the chairman, because as you pointed out, this was an ad hoc group. I might have been an ad hoc leader of it.

Q. Then it is fair to say you were the ad hoc leader of this group that solicited the other banks to voice their opposi-

tion or to support voicing your opposition to the branch banking principles? Is that a fair statement?

A. Yes, the Colorado Bankers Association, correct.

* * * * *

[1232] MR. SCHOEPKE: If Your Honor please, Plaintiff's Exhibits 184 and 185 which were the documents indicating the cross loans between—the loans that officers of the First National had from Colorado National and the loans that Colorado National officers had from First National of Denver. Now, they were in code form in order to preserve the confidentiality. We have the key to that code which we would offer for the Court to seal in evidence, just simply tying in with the code the names of the officers in question.

MR. METZGER: I don't believe the key serves any useful purpose. You have the dollars and numbers for whatever value they may have. We would object to this breaching or any possible breaching of the confidentiality unless we can show some reason why we need these names, why, the names are of some particular significance.

MR. SCHOEPKE: Well, one, it shows that the officers involved are the top echelon officers in both institutions. I believe that Colorado National Bank listed the loans held from First National Bank or from Colorado National Bank by the top 30 officers of the First National Bank of Denver and in turn the listing that——

THE COURT: Well, haven't you established this as a practice?

[1233] MR. SCHOEPKE: Yes, the thing is, that these are not just people in the teller line. They are in the top——

THE COURT: What difference does it make? I mean, let's fill out the record to that extent. Then they are top officers. Then you won't need the names.

MR. SCHOEPKE: Would you stipulate they are top officers in the institution?

MR. METZGER: Colorado National—it is a matter of record that these were selected from the top 25. That was the interrogatory addressed to Colorado National. So that's now a matter of record. As to the First National Bank of Denver——

MR. SCHOEPKE: We extracted from that—that from the interrogatory answers and we got it and it shows the titles.

MR. METZGER: Five of the 17 are at the assistant level and knowing banks, Your Honor, that is going down a long way in the chain.

THE COURT: Well, that's all right. I just don't think we need to identify them.

MR. SCHOEPKE: Well, my suggestion was that they be sealed. I certainly don't have any motive to identify them but for perfection of the record I suggested they be kept by the Court under seal.

THE COURT: I don't see why the key ought to be [1234] under seal. I don't see why the names make any difference. It's not illegal.

MR. SCHOEPKE: It's not a question of illegality. It's a question of blunting the sharpness of the competition which is one of the issues in the antitrust case. That's all we have in mind.

THE COURT: We're not concerned really between the competition between the First and Colorado anyway, I don't think.

MR. SCHOEPKE: One of our arguments of a concentrated market is that once that's been made, that competition tends to be less—This is an example of——

MR. METZGER: Let me offer a stipulation, Your Honor. I will stipulate that there were senior officers of both banks involved. If counsel will stipulate that at the time these loans were made that the maximum you could borrow from your own bank by regulation of the Comptroller of the Currency was $2500—if we've got those stipulations, that's fine.

MR. SCHOEPKE: I think that will take care of it, Your Honor.

THE COURT: Okay.

* * * * *

[1247] THE COURT: Just give me the ones you object to.

MR. SCHOEPKE: All right.

Number 10 we object to because it goes to the line of commerce, which we have argued has been decided by the Supreme Court and is not in issue in this case.

THE COURT: As to whether commercial banking——

MR. SCHOEPKE: As to whether commercial banking——

THE COURT: Well, they have got a right to make a record, I suppose.

MR. SCHOEPKE: Yes, but we——

THE COURT: You do not agree with them. They can still preserve it, can't they?

MR. SCHOEPKE: Well, we do not object to the Court's considering this document. We just wish to make it clear

that by not objecting we are not going along with their contention——

[1248] THE COURT: All right.

MR. SCHOEPKE: —on the line of commerce.

* * * * *

[1255] MR. SCHOEPKE: Defendants' Number 60 is the flow of savings in Philadelphia between banks and other financial organizations. It is irrelevant as dealing with the line of commerce, Your Honor. It is retrying the Philadelphia case, which I don't think is appropriate here.

Defendants' Number 61 also goes to the line of commerce and in our respectful view is irrelevant.

* * * * *

[1256] MR. SCHOEPKE: All right. Then we have no objection.

* * * * *

[1257] No. 66 goes to line of commerce and on that ground we would object to it as being irrelevant.

And I am at the end now, Your Honor.

No. 67 is banks in other states which are downstream correspondents with major Denver banks. We think we have made a case that the State of Colorado is the most appropriate geographic market so we would object to No. 67 on the grounds of relevancy.

THE COURT: You mean the correspondent banking market area?

MR. SCHOEPKE: Yes, sir. So on that ground we would object to 67.

THE COURT: It's the Denver group of banks in the State of Colorado.

MR. SCHOEPKE: That's the most—in terms of economic realities, the most appropriate place within which——

THE COURT: If I were to hold that this was the appropriate area in the line of commerce, I would still have to find that the acquisition in question violates the statute.

MR. SCHOEPKE: Yes, in which connection it is our contention you have to take into account the entire trends in the industry.

THE COURT: Well, it's never clear to me from the way you people argue this, as to what extent these other transactions come into play. I am told on the one hand that [1258] I must try this case on the particular acquisition. On

the other hand, you are always trying to bring in various other relationships and transactions to bolster your case. So maybe——

MR. SCHOEPKE: Well, this all goes to the trend argument as aggravating the specific effect of the particular transaction under immediate examination which we have developed in our brief and will develop more.

THE COURT: I can see where I might consider it in light of other things. It might assume a little more meaningful proportion. But that's about all I can see.

MR. SCHOEPKE: We think that is a vital point.

THE COURT: Well, what if it just created the slightest ripple in the market in question? If you have a whole passle of them otherwise that had preceded it? You say I would still have to grant you the relief?

MR. SCHOEPKE: Your Honor, may I ask it this way. I am not really prepared for my final argument at this point but may I answer it this way. And this is from the Bethlehem Steel case which we had occasion to read.

THE COURT: You answer it from yourself, from what you know about the law here and what your theory of this case is. Don't give me Bethlehem Steel. I'll read that myself. Just tell me what your theory of the case is in response to my question.

MR. SCHOEPKE: Let me put it this way. And, I am [1259] plagiarizing someone else but it's expressed better. You can eat an apple two ways; you can nibble at it delicately or can gobble it ravenously, but the end result is that you have consumed the apple. And, it is this notion of nibbling away here that we place the main thrust of our argument, that you have to consider the transaction immediately in question in terms of the overall trend. It's the same idea as——

THE COURT: What if the whole apple has been eaten and there is just a nibble left? Do you think I have to enjoin that? Doesn't do much good, does it?

MR. SCHOEPKE: Well, if you leave even a little bit left there is something there besides a monopoly and there is also the grounds for deconcentration and this is the fundamental thrust of the antitrust laws; is to leave the possibility of deconcentration always open. The courts have said this over and over again, where a market is——

THE COURT: It is always open, I suppose.

MR. SCHOEPKE: Pretty hard where there is only one

competitor for another one to break in.

THE COURT: I am not going to give you an answer to that.

We will take a short recess. I do, though, want to ask Dr. Baxter some questions. As I understood him there is not very much of what you call really vigorous competition in the Greeley area, anyhow, is that right?

[1260] You can sit down.

DR. BAXTER: Well, I was comparing the——

THE COURT: I mean, at present.

THE WITNESS: Yes.

THE COURT: Right now?

THE WITNESS: Yes, that's correct.

THE COURT: In other words, I think that you lead up to that by saying you discovered it in your travels in Colorado that these small towns—in these small towns that the banks do not compete vigorously in any event.

THE WITNESS: That is correct.

THE COURT: They have all their traditional market share and they try to hold onto it?

THE WITNESS: That's correct. They look after new business that may be coming into the community, but there is no real aggressive solicitation program, no real effort such as you find in a place like Denver.

THE COURT: And this approach obtains in the town of Greeley market, is that right?

THE WITNESS: That's correct.

THE COURT: So, therefore, if there is no particular competition at present, why, this acquisition can't have much of an adverse effect.

THE WITNESS: It was my judgment that this acquisition would be procompetitive in the sense that the type of [1261] operation of the First National Bancorporation would bring to Greeley and Weld County would be far more competitive than would—and it would therefore induce the others to work a little harder, too.

THE COURT: Yes, but if the experience that we have had from United Bank and Affiliated Bankshares is any criterion, it won't have much effect at all, is that right? Because, they don't seem to——

THE WITNESS: My judgment is that the First National Bancorporation would compete harder. At least, this is their testimony.

THE COURT: But you don't think they would compete any less, anyhow?

THE WITNESS: I certainly would agree with that, Your Honor.

THE COURT: You gentlemen may want to expand on this a little bit.

I might say that what I know of the smaller communities in Colorado—If you don't think Colorado has any monopoly, why, there is quite a grain of truth to this—it is not a—not an adversary atmosphere at all. I mean, I suppose there is some competition, but I am sure they don't cut one another's throats in any field of endeavor.

THE WITNESS: I agree.

THE COURT: I mean, it's a low tempo than it is in [1262] even some of these suburban communities like Englewood and Aurora and so on. They sort of just—just as Denver I don't suppose is as much of a competitive atmosphere as Kansas City or St. Louis or Chicago. Maybe when you get real big, why, it tends to come back to more of a monopolistic atmosphere.

* * * * *

[1263] PHILIP HOGUE,

called as a witness by the defendants on surrebuttal, having been previously duly sworn, on his oath testified as follows:

[1264] THE COURT: You have already been sworn?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

By MR. METZGER:

Q. Showing you Defendants' Exhibit Number 16, Mr. Hogue, from what sources was this document derived?

[1265] A. The references used in putting together this document was the 1970 Mountain States Bank Directory for Colorado and the Polk's World Bank Directory for September, 1970, and the American Bank Directory, Spring Edition, 1970.

Q. Did you examine this document to determine whether it included all correspondents of the First National Bank of Denver?

A. Yes, I did. One of the reasons for using all three sources was that in many cases one source will list the number of banks that another source will not.

Q. Did these three sources exhaust the correspondents of the First National Bank of Denver?

A. No, sir.

Q. By any substantial amount?

A. I don't remember the numbers, Mr. Metzger. We checked as an example and the account the First National Bank of Denver maintains and the account in Colorado Springs was not listed. One in Wyoming that was not listed and I think it's common in many cases not to list every one of your correspondents.

[1273] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2413

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

FIRST NATIONAL BANCORPORATION AND FIRST NATIONAL BANK OF GREELEY,
DEFENDANTS.

PROCEEDINGS BEFORE THE HONORABLE WILLIAM E. DOYLE, Judge, presiding, United States District Court for the District of Colorado, Courtroom D, U. S. Courthouse, Denver, Colorado, commencing at or about the hour of 9:00 o'clock a.m., Thursday, May 13, 1971.

APPEARANCES:

(As heretofore noted.)

[1274] MR. LIPKOWITZ: Plaintiff calls William P. Lober.

WILLIAM P. LOBER,

a witness called by and on behalf of the plaintiff on rebuttal, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By MR. LIPKOWITZ:

THE COURT: Give us your name, address and occupation.

THE WITNESS: William P. Lober, L-o-b-e-r, I am Comptroller for the United Bank of Denver.

Q. (By Mr. Lipkowitz) Mr. Lober, did I ask you to come to this court this morning and bring with you back issues of the annual report of the then Denver U. S. National Bank.

A. Yes, sir.

Q. Would you please read from Page 4 of the——

MR. METZGER: Objection. Not the best evidence. If the witness has any facts, let him state them.

THE COURT: I don't know what he's going to ask him [1275] yet. I've got to find out.

MR. LIPKOWITZ: I will build a foundation for asking the witness to read from the report.

Q. Were you the comptroller or assistant comptroller of the United Bank of Denver in the early years of this decade—of the past decade, the 1960's?

A. I was the chief accounting officer during that period.

Q. Are you familiar with the aggregate deposits of the then Denver U. S. National Bank, the totals?

A. Yes, sir.

Q. Was there an extraordinary deposit in the last days of the calendar year 1961 that you were aware of?

A. Yes, there was.

Q. Could you explain to the Court how that deposit came about and what its magnitude was, roughly?

A. Well, on December 22nd, I believe it was, of 1961, the bank received some $106 million which we were entrusted with the responsibility of disbursing to the stockholders of Argo Oil Company as liquidation dividends. They sold their assets and we were charged with that responsibility.

Q. And it was the trust department that was charged with this responsibility, is that correct?

A. Yes.

Q. Was that deposit a significant portion of the [1276] deposits of the bank by the end of the year?

A. About a fourth of it, roughly.

Q. And this was an extraordinary item?

A. It was, sir.

Q. Do you know of any other items that were quite as extraordinary as that in your years with the Denver U. S. National Bank?

A. No, I do not.

Q. Did this pose some sort of problem in terms of explaining to your shareholders why suddenly the deposits went way up and then a year later went way down?

A. Yes, it made the statements noncomparable, certainly, for the two periods.

Q. Could you explain how you accounted to your stockholders in the 1963 annual report?

A. Well, the 1963 annual report—we told them—We made a five-year comparison of our deposit history and other figures and we told them that 1961 was inflated by about $106 million as a result of this Argo transaction and we stated the—that the proper figure, instead of $429 million should be about $323 million.

[1277] Mr. Lipkowitz: Thank you, no further questions.

Cross-examination

By Mr. Metzger:

Q. Sir, did you report these deposits in your annual report for 1961?

A. Yes.

Q. In the annual condition statement for 1961?

A. Yes, sir.

Q. Were they dissipated on January 1, 1962?

A. No, sir.

Q. Were they part of the assets of your bank in substantial part for some period of the next year?

A. No, a very short period. By six months, most of them were dissipated.

Q. You had the use of these funds for six months?

A. A short time. Much of them had been paid out by the middle of the year.

Q. So, for about six months you had the use of a substantial portion of those funds?

A. Yes, sir.

Mr. Metzger: That's all. No further questions.

The Court: You may be excused.

Mr. Lipkowitz: Plaintiff calls William J. Tracy.

The Court: Come forward, Mr. Tracy.

Mr. Schwarz: Your Honor, may I renew my objection [1278] of yesterday as to the improper rebuttal character of this witness' testimony? I believe we discussed it yesterday.

The Court: You surely may.

Mr. Schwarz: Thank you.

William J. Tracy,

called as a rebuttal witness by the plaintiff, being first duly sworn, on his oath testified as follows:

THE COURT: Take the witness chair. Give us your name, address and occupation.

THE WITNESS: William J. Tracy, Trinidad, Colorado.

DIRECT EXAMINATION

By MR. LIPKOWITZ:

Q. Your occupation, sir?

A. My occupation is President of the First National Bank in Trinidad, Colorado.

Q. Are you here under subpoena?

A. Yes, I am sir.

Q. Could you tell the Court where Trinidad, Colorado, is located?

THE COURT: I know.

Q. For the record, how far is Trinidad from——

A. About a hundred——

Q. —from the New Mexico border?

A. From the New Mexico border? Eighteen miles.

Q. How far from Pueblo, Colorado?

[1279] A. Eighty miles.

Q. And from Denver?

A. 185.

Q. Does your bank use or obtain correspondent services from the First National Bank of Pueblo?

A. Yes, we do.

Q. Would you describe what sort of services your bank obtains from the First National Bank of Pueblo?

A. We use the First National Bank for check processing and overlines.

Q. And do you process all your checks through First National Bank of Pueblo?

A. No, we do not.

Q. Well, is there some geographic area from which you select checks to go to the First National Bank of Pueblo for processing?

A. We use the First National Bank to clear the checks in the Arkansas Valley, the San Luis Valley, New Mexico and Texas.

Q. And where do you clear the rest of your checks?

A. Through the United Bank of Denver.

Q. Now, does the First National Bank of Pueblo provide other correspondent services to your bank?

A. These are the only ones that we use.

Q. Do you use any other Colorado correspondents besides [1280] the First National Bank of Pueblo and the Denver U.S. National Bank—well, United Bank of Denver now?

A. We use the Colorado National Bank for the Bank-Americard.

Q. Who is your prime correspondent?

A. United Bank of Denver.

Q. What services do they provide besides check clearing of the checks that you do not clear through the First National Bank of Pueblo?

A. We use the computer for our time, demand, bond portfolio, on the computer, and we also use them for our safekeeping. We also use them for our profit-sharing plan.

Q. Since Pueblo is closer to you than Denver, do you consider using First National Bank of Pueblo as your prime correspondent?

A. No, we have always used a Denver bank as a prime correspondent.

Q. Why?

A. Well, because of the transportation facility that's available here in Denver, mainly, for expediency in clearing checks.

Q. You think you can clear your checks faster through Denver than trying to clear them through Pueblo?

Mr. Schwarz: Objection, Your Honor, that's leading.

The Court: Overruled.

[1281] Did you hear the question?

The Witness: Yes, I did.

The Court: I assume that when you say it is because of the time factor that it goes more quickly through Denver?

The Witness: Yes, Your Honor.

Q. Does the First National Bank of Pueblo have the ability in your opinion to provide the full range of correspondent services that you obtain from the United Bank of Denver?

A. I think presently they probably offer everything except computer service.

Q. But you use United Bank of Denver, nevertheless?

A. I would say it's all in personal opinion.

Q. And your personal opinion as a banker is that you

find United Bank of Denver to be a more satisfactory correspondent bank than the First National Bank of Pueblo?

A. Well, because Denver is considered the financial center of the Rocky Mountain West, why, I use this as my prime correspondent.

MR. LIPKOWITZ: Thank you. No further questions.

CROSS-EXAMINATION

By MR. SCHWARZ:

Q. Mr. Tracy, isn't it true that last night on the telephone you told me that one important reason for using the United Bank for the various services you do use it for is because they hold the bank stock loan of the owner of your [1282] bank?

A. Yes, sir, this is one of the reasons.

MR. SCHWARZ: No further questions.

Wait a minute.

(Counsel conferred.)

MR. SCHWARZ: No further questions. Thank you.

THE COURT: You may be excused from further attendance, Mr. Tracy.

(Witness excused.)

[1283] MR. SCHOEPKE: Your Honor, this concludes the government's rebuttal case.

* * * * *

[1292] MR. METZGER: We should like at this time to renew our motion to dismiss the plaintiff's case. I believe that there has been no prima facie case established either on the plaintiff's case or through its cross-examination of the defendants' witnesses, nor through the rebuttal case.

* * * * *

[1293] THE COURT: We will deny the motion for the record, but preserve the question so that the defendants' record will be preserved whereby they can maintain that on the basis of the evidence at the close of the Government's case and upon the basis of all the evidence the evidence of the Government is insufficient in law to satisfy the burden. Therefore, it will not be granted.

* * * * *